

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DAVID H. DEAN,  
Plaintiff,

v.

LOWE'S HOME CENTERS, INC.,  
Defendant.

CA No. 04-12605-mel

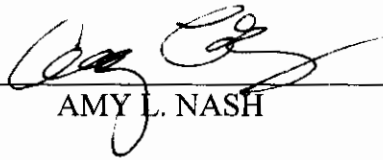
**AFFIDAVIT OF AMY L. NASH IN SUPPORT  
OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

I, Amy L. Nash, do depose and state as follows:

1. I am an attorney at the law firm of Littler Mendelson, P.C., One International Place, Suite 2700, Boston, Massachusetts 02110. Throughout this Affidavit, I refer to Lowe's Home Centers, Inc. as "Lowe's" or "the Company."
2. Attached hereto as Exhibit A is a true and accurate copy of the deposition of plaintiff David H. Dean and selected exhibits thereto, which was taken on March 10, 2005 during discovery in this matter.
3. Attached hereto as Exhibit B is a true and accurate copy of the deposition of Robert Estes, which was taken on April 29, 2005 during discovery in this matter.
4. Attached hereto as Exhibit C is a true and accurate copy of an Employee Performance Report for Daniel Puccio, dated November 9, 2001. This document, which bears the Bates number L0026, was produced during discovery in this matter.
5. Attached hereto as Exhibit D is a true and accurate copy of an Online Personnel Data Change Form for David Dean. This document, which bears the Bates number L0001, was produced during discovery in this matter.

6. Attached hereto as Exhibit E are true and accurate copies of Lowe's Incident Reports, dated November 8 and November 9, 2001. These documents, which bear the Bates numbers L0029 through L0033, were produced during discovery in this matter.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 6 DAY OF JUNE 2005.



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AMY L. NASH

Volume: I  
Pages: 1 to 120  
Exhibits: 1 to 13

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

\* \* \* \* \*

DAVID H. DEAN,  
Plaintiff,

vs.

Civil Action  
No. 04-12605-MEL

LOWE'S HOME CENTERS, INC.,  
Defendant.

\* \* \* \* \*

DEPOSITION OF DAVID H. DEAN, a witness  
called on behalf of the Defendant, taken pursuant to  
the applicable provisions of the Federal Rules of  
Civil Procedure before Cynthia A. Powers, Shorthand  
Reporter and Notary Public in and for the  
Commonwealth of Massachusetts, at the law offices of  
Littler Mendelson, P.C., One International Place,  
Suite 2700, Boston, Massachusetts, on Thursday,  
March 10, 2005, commencing at 10:10 a.m.

\* \* \* \* \*

KACZYNSKI REPORTING  
72 Chandler Street, Suite 3  
Boston, Massachusetts 02116  
(617) 426-6060

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Page 4

## 1 APPEARANCES:

2 ROBERT K. RAINER, P.C.  
Daniel C. Federico, Esquire  
3 60 VFW Parkway  
Revere, Massachusetts 02151  
4 (781) 289-7900  
Representing the Plaintiff

5 LITTLER MENDELSON, P.C.  
6 David C. Casey, Esquire  
Amy L. Nash, Esquire  
7 One International Place, Suite 2700  
Boston, Massachusetts 02110  
8 (617) 378-6000  
Representing the Defendant

## 1 PROCEEDINGS

2 MR. CASEY: Dan, in terms of  
3 stipulations, I suggest that we reserve all  
4 objections to the time of trial and motions to strike  
5 and that the only exception be with respect to  
6 objections as to the form of the question. I further  
7 suggest that the witness have an opportunity for  
8 thirty days after your receipt of a copy of the  
9 transcript to review and make any changes he thinks  
10 necessary and then to sign under the penalties of  
11 perjury only, which will obviate the need for his  
12 signing before a notary public, and that if he  
13 doesn't make any corrections in thirty days after  
14 your receipt his opportunity will be deemed waived.  
15 Is that acceptable?

16 MR. FEDERICO: That is acceptable.

17 DAVID H. DEAN,

18  
19 having been satisfactorily identified  
20 and duly sworn by the Notary Public,  
21 was examined and testified as follows:

## 22 DIRECT EXAMINATION

23 BY MR. CASEY:

24 Q. Good morning, Mr. Dean.

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## 1 INDEX

2 Examination by: Direct Cross Redirect Recross  
3 Mr. Casey 4  
Afternoon Session 88

## 4 EXHIBITS

Exhibit	Page
1 Plaintiff's Answers to First 30	
Set of Interrogatories Propounded	
by the Defendant	
2 MCAD Complaint 41	
3 Lowe's Incident Report 65	
dated November 9, 2001	
4 Lowe's Incident Report 74	
dated November 8, 2001	
5 Lowe's Employee Orientation 88	
Training Record	
6 Acknowledgement dated 89	
January 6, 2001	
7 Application for Employment 92	
dated January 2, 2001	
8 Complaint and Jury Claim 100	
9 Lowe's Strategic Training & 101	
Achievement Review/Career	
Development Review dated	
August 31, 2001	
10 Lowe's Strategic Training & 104	
Achievement Review/Career	
Development Review dated	
January 30, 2002	
11 Lowe's Employee Performance 108	
Report dated January 20, 2002	
12 Lowe's Employee Performance 109	
Report dated April 1, 2002	
13 Lowe's Employee Performance 114	
Report dated April 1, 2002	

1 A. Good morning, sir.

2 Q. My name is David Casey. I am with the  
3 law firm Littler Mendelson. I represent Lowe's.

4 A. Yes.

5 Q. And I'm going to be asking you a  
6 series of questions today about the lawsuit that  
7 you've brought against my client. As I do that, I'd  
8 like you to keep a few things very much in the front  
9 of your mind throughout.

10 First, if at any time you don't  
11 understand a question or any phrase or word in a  
12 question that I put to you, please tell me that you  
13 don't understand my question, and I will rephrase it  
14 until it's clear to you what I'm getting at. Is that  
15 agreeable?

16 A. Yes, sir.

17 Q. Second, and similarly, if at any time  
18 you don't hear a question in its entirety, because  
19 there's noise outside the room or I garble my words  
20 or the like, tell me --

21 A. Yes, sir.

22 Q. -- and I will have Cindy, the  
23 stenographer, read it back for you.

24 A. Okay.



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1 Q. Is that agreeable?  
 2 A. Yes.  
 3 Q. Along the same lines I want to  
 4 emphasize, and I cannot emphasize too strongly, that  
 5 this is a process about trying to understand your  
 6 thoughtful, considered, careful testimony. This is  
 7 not about trying to trick or intimidate or harass or  
 8 confuse you. I want you to understand that and the  
 9 following comments: If you get tired, if you lose  
 10 your concentration, if you get upset, if you get  
 11 confused, if you need to take a break or clear your  
 12 mind or for any reason are having difficulty  
 13 answering any -- I underscore "any" -- of my  
 14 questions, I want to you tell me and we'll take a  
 15 break.  
 16 A. All right.  
 17 Q. Okay?  
 18 A. Yep.  
 19 Q. Finally, before -- and you're doing a  
 20 good job on this point -- before you even begin to  
 21 say anything in response to any of my questions,  
 22 please wait until you're absolutely certain that I've  
 23 finished my question, okay? And there are several  
 24 reasons for that. First, the last word in a question

Page 7

1 can fundamentally alter its meaning, and I don't want  
 2 you to think you know what I'm asking you before I've  
 3 completed my question, understand?  
 4 A. Yes.  
 5 Q. Second, if you try to answer my  
 6 question before I've got it out, you may not be  
 7 reflecting and carefully considering your answers,  
 8 and I want your very carefully considered testimony  
 9 and only your very carefully considered testimony  
 10 today; agreed?  
 11 A. Yes, sir.  
 12 Q. Finally, as terrific as Cindy is, it's  
 13 hard for her to take down two people who are speaking  
 14 at the same time.  
 15 A. Okay.  
 16 Q. So again, I'm going to be asking you a  
 17 bunch of questions; I want you to take your time with  
 18 every one of them; I want you to wait until you're  
 19 certain I've finished the question before you even  
 20 begin to answer; and if at any time you don't  
 21 understand or hear a question or you're losing your  
 22 concentration or focus for any reason, I want you to  
 23 tell me immediately so that you can take a break,  
 24 clear your head, regain your composure, whatever the

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1 case may be, so that at the end of the day you will  
 2 have heard and understood each of my questions and  
 3 you will have been certain to reflect carefully on  
 4 them and provide me with your very best answer. Is  
 5 that agreeable?  
 6 A. Yes, sir.  
 7 Q. Great. Now, are you under any  
 8 medication today?  
 9 A. No, I just have my inhaler with me.  
 10 Q. I understand you have asthma. When  
 11 you make reference to your inhaler, is that what you  
 12 are referring to?  
 13 A. My Albuterol, that's all the only  
 14 medication I'm under right now.  
 15 Q. Can you spell that medication for the  
 16 record?  
 17 A. Spell "medication"?  
 18 Q. Albuterol.  
 19 A. Oh, A L B U T E R O L, I guess.  
 20 Q. And have you had any -- and I  
 21 apologize in advance for asking this question, but I  
 22 really need to -- have you had any alcohol this  
 23 morning or are you under the influence of any illegal  
 24 drugs?

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1 A. No.  
 2 Q. As far as you know, there's nothing  
 3 whatsoever that would adversely affect your ability  
 4 to hear and understand and respond carefully and  
 5 thoughtfully to my questions today?  
 6 A. No, sir.  
 7 Q. Is that correct?  
 8 A. Oh, that's correct.  
 9 Q. Have you ever been deposed before?  
 10 A. I don't understand that question.  
 11 Q. Have you ever been in a process like  
 12 this where a lawyer asked you questions under oath?  
 13 A. Oh, no, sir.  
 14 Q. Have you ever been involved in  
 15 litigation of any kind before?  
 16 A. I guess, yeah.  
 17 Q. What litigation have you been involved  
 18 in?  
 19 A. I was in a car accident and my  
 20 insurance company went after the person that was  
 21 involved in the accident. I had to sit down and talk  
 22 to their people, I guess, and that was pretty much  
 23 it.  
 24 Q. Were you a party to that lawsuit, or

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1 was there a lawsuit?  
 2 A. I was the victim. I was hit. I was  
 3 in an automobile accident.  
 4 Q. When did that happen?  
 5 A. I'd say '96 maybe.  
 6 Q. Did you receive any money as a result  
 7 of that accident and the litigation associated with  
 8 it?  
 9 A. Yes.  
 10 Q. How much?  
 11 A. There was a settlement for, I guess,  
 12 maybe ten thousand dollars or something.  
 13 Q. What lawyer, if any, represented you  
 14 in that matter?  
 15 A. Rosencranz.  
 16 Q. Is that the last name?  
 17 A. Rosencranz, that's the only name I can  
 18 remember.  
 19 Q. And what city or town did that lawyer  
 20 work out of?  
 21 A. Boston, here.  
 22 Q. Do you recall what county the lawsuit  
 23 was filed in, whether it was Middlesex or Suffolk or  
 24 the like?

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1 A. What is this county here, Suffolk  
 2 County, I guess.  
 3 Q. Where did you live at the time of this  
 4 car accident?  
 5 A. In Lynn.  
 6 Q. Okay. Did you ever actually go into a  
 7 courtroom?  
 8 A. No.  
 9 Q. Other than the litigation associated  
 10 with the car accident, have you had any other  
 11 involvement with courts or the law; and by that I  
 12 mean have you been divorced, have you been involved  
 13 in restraining orders, have you been involved in any  
 14 criminal matters or the like?  
 15 A. I don't understand that question. You  
 16 know, I've had, you know, I've had a restraining  
 17 order where I've taken out on a young lady, you know,  
 18 because she was harassing me.  
 19 Q. In what court?  
 20 A. That would be in Lynn court, Essex  
 21 County, I guess.  
 22 Q. Lynn district court or superior court?  
 23 A. Lynn district.  
 24 Q. What was the name of the woman against

Page 12

1 whom you received this restraining order?  
 2 A. Her name is Tabitha Murkison.  
 3 Q. Spell the last name as best you can?  
 4 A. M U R K I S O N.  
 5 Q. When did you obtain that restraining  
 6 order?  
 7 A. I'd say it was around between  
 8 2000-2001, I guess.  
 9 Q. Have any restraining orders ever been  
 10 taken out as against you?  
 11 A. No.  
 12 Q. Have you been involved in any other  
 13 kind of criminal or civil matter involving a court?  
 14 A. Are you asking me if I have a record?  
 15 Q. Have you ever been arrested?  
 16 A. Yes.  
 17 Q. Have you ever been convicted or pled  
 18 guilty or no contest of any kind to any --  
 19 A. No.  
 20 Q. -- criminal charge?  
 21 A. No.  
 22 Q. For what have you been arrested?  
 23 A. Shoplifting.  
 24 Q. On how many occasions have you been

Page 13

1 arrested for any crime or alleged crime?  
 2 A. You know, um, in my past, coming from  
 3 the area where I come from, there was a lot of  
 4 incidents, there was numerous incidents.  
 5 Q. And for what alleged crimes were you  
 6 arrested, other than shoplifting?  
 7 A. Assault and battery, possession of a  
 8 Class B substance, that's it pretty much.  
 9 Q. Do you remember what the Class B  
 10 substance was?  
 11 A. Marijuana.  
 12 Q. And it's your testimony that you were  
 13 never convicted of any of these crimes?  
 14 A. No.  
 15 Q. And you never pled guilty or no  
 16 contest or agreed to a continuance without a finding;  
 17 is that correct or not correct?  
 18 A. Yes, correct.  
 19 Q. What's your date of birth?  
 20 A. July 17, 1954.  
 21 Q. And what's your Social Security  
 22 number?  
 23 A. 015-44-0757.  
 24 Q. Have you ever gone by any name other



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1 than David Dean?  
 2 A. I did use an alias one time, and I  
 3 think it was David Brown, I think.  
 4 Q. When was that?  
 5 A. Somewhere back in the eighties. I  
 6 can't quite remember.  
 7 Q. For what reason?  
 8 A. Possession of a Class B substance.  
 9 Q. Was any kind of guilty finding or no  
 10 contest plea or continuance without a finding entered  
 11 as against David Brown relative to that charge of  
 12 possession of a Class B substance?  
 13 A. There was no -- there was a continuing  
 14 without a finding.  
 15 Q. In what state?  
 16 A. Massachusetts.  
 17 Q. County?  
 18 A. Suffolk.  
 19 Q. Do you recall what Social Security  
 20 number, if any, you provided at that time?  
 21 A. Same one.  
 22 Q. Did you review any documents or papers  
 23 or any material or evidence before coming to testify  
 24 today?

Page 15

1 A. No.  
 2 Q. Other than with counsel, did you speak  
 3 with anybody --  
 4 A. No.  
 5 Q. -- about this matter in preparation  
 6 for your deposition today?  
 7 A. No.  
 8 Q. What is your full name?  
 9 A. David Harden, H A R D E N, Dean.  
 10 Q. What's your address?  
 11 A. 36 Sagamore Street, Apartment 1, Lynn,  
 12 Mass.  
 13 Q. How long have you lived there?  
 14 A. Just over a year now.  
 15 Q. With whom, if anyone, do you live?  
 16 A. My girlfriend.  
 17 Q. Her name?  
 18 A. Marilyn Cox, C O X.  
 19 Q. Are you married?  
 20 A. Yes.  
 21 Q. Are you separated from your wife?  
 22 A. Yes.  
 23 Q. Her name?  
 24 A. Tanya.

Page 16

1 Q. Last name?  
 2 A. Dean.  
 3 Q. When were you and she married?  
 4 A. I'd say in 1980.  
 5 Q. When did you first separate?  
 6 A. Let's see, I'd say around '85, '86.  
 7 Q. Did you reconcile at any point since  
 8 then, or have you been separated since 1985 or '6?  
 9 A. We've been separated since then.  
 10 Q. Do you have any children?  
 11 A. One son. I have two children. By  
 12 her, one son.  
 13 Q. Two children total, one by Tanya Dean?  
 14 A. Yes, that's my son, David Jr.  
 15 Q. How old is he?  
 16 A. He's 26.  
 17 Q. Where does he live?  
 18 A. In Boston.  
 19 Q. And your other child?  
 20 A. Her name is Dara.  
 21 Q. Dara?  
 22 A. Dara, D A R A.  
 23 Q. How old is she?  
 24 A. I believe 31.

Page 17

1 Q. Where does she live?  
 2 A. In Boston.  
 3 Q. Do you see David Jr.?  
 4 A. All the time.  
 5 Q. Do you see Dara?  
 6 A. All the time.  
 7 Q. Where does David Jr. live, what  
 8 street?  
 9 A. I don't know their streets.  
 10 Q. What's his telephone number?  
 11 A. His home number is (617) 427-2372 and  
 12 his cell number is 480, no, (617) 480-4504.  
 13 Q. Where does Dara live?  
 14 A. I don't -- I mean, I know, but I don't  
 15 know the street.  
 16 Q. In what section of the city?  
 17 A. Between Andrew Station and Jackson  
 18 Station.  
 19 Q. What section of the city does David  
 20 live in?  
 21 A. In the Delhi Street area.  
 22 Q. What is Dara's telephone number?  
 23 A. That I don't know, I mean, because she  
 24 has a different number; like every time I see her she

Page 18

1 has a different phone number or different cell  
 2 number.  
 3 Q. When did you last see Dara?  
 4 A. About two weeks ago.  
 5 Q. Do you use a cell?  
 6 A. No.  
 7 Q. You use your home number?  
 8 A. Yes.  
 9 Q. What's your home telephone number?  
 10 A. (781) 592-6563.  
 11 Q. Six-five-six --  
 12 A. Three.  
 13 Q. Is that phone in your name?  
 14 A. Yes.  
 15 Q. How long have you had that telephone  
 16 number?  
 17 A. Maybe twelve years.  
 18 Q. What's your educational background?  
 19 Did you graduate from high school?  
 20 A. Yes, sir.  
 21 Q. When?  
 22 A. In 1971, '72.  
 23 Q. What high school?  
 24 A. It used to be a high school here in

Page 19

1 downtown Boston called Don Bosco Tech.  
 2 Q. Have you taken any courses in college  
 3 or post high school?  
 4 A. I went to University of Massachusetts  
 5 in Amherst right after my graduation from Don Bosco  
 6 on an academic and sports scholarship there.  
 7 Q. What sport?  
 8 A. Basketball.  
 9 Q. Did you graduate from UMass?  
 10 A. I had to withdraw in my sophomore  
 11 year.  
 12 Q. Why?  
 13 A. My parents were elderly at the time,  
 14 and my dad got kind of sick, and I needed to be home  
 15 with my mom.  
 16 Q. Did you withdraw for any other reason?  
 17 A. No.  
 18 Excuse me. Can I get some more water?  
 19 Q. Sure.  
 20 Are you currently employed?  
 21 A. No.  
 22 Q. When last were you employed?  
 23 A. Last year.  
 24 Q. When last year?

Page 20

1 A. I'd say around September.  
 2 Q. Of 2004?  
 3 A. Yes.  
 4 Q. By whom were you employed at that  
 5 time?  
 6 A. W&W Construction.  
 7 Q. In what capacity were you employed by  
 8 W&W Construction?  
 9 A. A laborer.  
 10 Q. What were you making on an hourly  
 11 basis?  
 12 A. I'd say about fourteen dollars an  
 13 hour.  
 14 Q. How long did you work with W&W  
 15 Construction?  
 16 A. I'd say for about three years.  
 17 Q. So sometime in, roughly speaking, the  
 18 fall of 2001 through the 2004; is that correct?  
 19 A. Yes.  
 20 Q. Did you work full-time for W&W  
 21 Construction during that three-year period?  
 22 A. As needed. I mean, as needed. I  
 23 mean, like, when work was available for me I was  
 24 there, and then there was a lot of time, you know,

Page 21

1 there was no work for me.  
 2 Q. Why did you leave in September 2004?  
 3 A. Well, my asthma condition is seasonal  
 4 and, you know, I usually get congested by just a  
 5 change of the weather and, like, when it goes from  
 6 the fall to the winter my condition gets bad.  
 7 Q. So do I understand your testimony to  
 8 be that you left work with W&W Construction in or  
 9 about September of 2004 because your asthma was  
 10 making it impossible for you to continue to work?  
 11 A. Yes.  
 12 Q. And does asthma frequently adversely  
 13 affect you and your ability to work in the fall of  
 14 the year?  
 15 A. Well, it's seasonal like.  
 16 Q. And I understand and does it typically  
 17 adversely affect you in the fall?  
 18 A. Yes. Just like right now, going from  
 19 the winter to the spring, I get that same, you know,  
 20 problem.  
 21 Q. Are you receiving any kind of  
 22 disability benefits either from a private insurance  
 23 source or from the government?  
 24 A. No, sir.



Page 22

1 Q. How do you support yourself?  
 2 A. My landlord, I do a lot of odd jobs  
 3 around his property for him.  
 4 Q. What's your landlord's name?  
 5 A. Peter Mazereas.  
 6 Q. Spell it.  
 7 A. M A Z E R E A S, I think. I'm not  
 8 sure.  
 9 Q. For how long have you been doing odd  
 10 jobs for Peter Mazereas?  
 11 A. I've known Peter for I'd say over  
 12 seven years now.  
 13 Q. Have you been doing work for him for  
 14 around seven years?  
 15 A. Off and on.  
 16 Q. For how long have you been living in  
 17 one of his units?  
 18 A. One year, a little over one year.  
 19 Q. And prior to your current address  
 20 where were you living?  
 21 A. I lived at 26 Broad Street in Lynn.  
 22 Q. For how long?  
 23 A. I lived there for I'd say maybe close  
 24 to seven, eight years.

Page 23

1 Q. How long have you lived with Marilyn  
 2 Cox?  
 3 A. I've been living with Marilyn for now  
 4 I'd say the last three years.  
 5 Q. Do you have a good relationship with  
 6 her?  
 7 A. Very good.  
 8 Q. Has it been bad at all in the last two  
 9 years?  
 10 A. I don't understand.  
 11 Q. Has your relationship been adversely  
 12 affected with her in the last two years?  
 13 A. Oh, no, no, no. I thank God for her.  
 14 Q. Are you currently treating with any  
 15 physicians or mental health clinicians or any other  
 16 kind of healthcare provider?  
 17 A. Yes, I am. His name is David Joseph.  
 18 He's my clinician. He's helping me with my stress  
 19 and my conditions.  
 20 Q. David Joseph Alpert?  
 21 A. Yes.  
 22 Q. When first did you see David Joseph  
 23 Alpert?  
 24 A. Yesterday.

Page 24

1 Q. First time you ever saw him?  
 2 A. Yesterday.  
 3 Q. Why did you go to see him yesterday?  
 4 A. That's when he was able to see me.  
 5 Q. When first did you contact him to see  
 6 him?  
 7 A. About maybe -- oh, God -- maybe two  
 8 weeks ago.  
 9 Q. Why did you contact him at that time?  
 10 A. Because I had just received my Mass  
 11 Health because I -- I didn't have no insurance, and  
 12 in order for me to be seen by him, I imagine I needed  
 13 to have Mass Health, and I finally got activated.  
 14 Q. How did you get activated on Mass  
 15 Health?  
 16 A. I do not know. I've been going over  
 17 to the Lynn Community Health Center into their  
 18 walk-ins for so long and then I guess one of the  
 19 doctors, you know, said, you know, you need to go see  
 20 somebody, you know, because your asthma is getting  
 21 worse, you're falling apart. I guess he took it upon  
 22 himself to file the information that he had in to  
 23 Mass Health.  
 24 Q. And who helped you with that, what

Page 25

1 doctor?  
 2 A. I don't remember the doctor's name. I  
 3 really don't know his name.  
 4 Q. But he's affiliated with Lynn  
 5 Community Health Center?  
 6 A. Yes, sir.  
 7 Q. Is Mass Health some sort of government  
 8 sponsored health insurance program?  
 9 A. I might think it's state funded. I'm  
 10 not sure. I know they help people who are dire  
 11 straits, who don't have insurance, or you know. This  
 12 doctor here, Dr. Alpert, he also gave me directions  
 13 on how I can go and get, you know, like a lot of  
 14 benefits that fits people like me who don't have  
 15 anything. He says you can go get fuel assistance and  
 16 food stamps. And I said, cool, I could use it.  
 17 Q. What was the reason why you decided to  
 18 see David Joseph Alpert?  
 19 A. Because -- you know, there's a lot of  
 20 different reasons -- I just needed somebody to talk  
 21 to, you know, somebody who I didn't know, somebody  
 22 who would maybe -- I don't know. I just needed  
 23 somebody to talk to.  
 24 Q. About what?

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1 A. About a lot of things.

2 Q. Tell me.

3 A. Well, you know, it's hard, you know,  
4 it's just, you know, you know, just a lot of things.  
5 Like, you know, I wanted to stop smoking cigarettes  
6 because the doctors are telling me it's killing me.  
7 He says, this is insane; you have asthma, you can't  
8 breathe and here you are, reaching for a cigarette.  
9 You need to talk to somebody about that. And I said,  
10 yeah. And I've been doing this all my life, you  
11 know. And I am glad he took the time to talk to me  
12 because I'm sure I'm going to be all right with him.

13 Q. Are there any other things that you  
14 wanted to see Alpert or someone like him to talk  
15 about other than trying to stop smoking cigarettes?

16 A. You know, like I've always been the  
17 type to keep a lot of stuff bottled up inside of me.  
18 And I don't talk a lot, but people have been telling  
19 me for a long time, you know, you need help, you need  
20 to talk to somebody, man -- because I'm not suicidal  
21 or homicidal or nothing like that -- but, you know,  
22 David, you're depressed, man, come up out of it, man,  
23 snap out of it. I don't want to be out, I don't want  
24 to be bothered, leave me alone.

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1 Q. People have been telling you that for  
2 a long time?

3 A. Ever since a few years now.

4 Q. Who's been telling you that?

5 A. My closest friend, you know, he's,  
6 he's a real buddy.

7 Q. His name?

8 A. His name is Levi Downing Jr., D O W N  
9 I N G, junior.

10 Q. Where does he live?

11 A. In Brockton.

12 Q. The stenographic record is not going  
13 to reflect this, but it's obvious that you're  
14 emotionally affected by talking about Levi Downing.

15 A. No, because like when I get emotional  
16 like this is because like he's, he's been a childhood  
17 friend, we've been friends for over thirty years, and  
18 he's like a spiritual brother to me. I don't have no  
19 mother, no father, no sisters, no brothers, you know.  
20 That's when I get like this, because I don't have  
21 nobody to talk to.

22 Q. Other than wanting to talk about  
23 stopping smoking cigarettes and about being depressed  
24 I think you said, was there any other reason why you

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1 wanted to see David Joseph Alpert?

2 A. Yeah, to talk about, you know, like  
3 letting go of things that I've been holding onto and  
4 like, and like every time I think about my family,  
5 you know, I get like this, you know, and I need to  
6 let that go.

7 Q. What kinds of things have you been  
8 holding onto; what are the major reasons, the major  
9 reasons why you wanted to see David Alpert?

10 A. You know, the cigarettes, leave the  
11 cigarettes alone, my girlfriend says. Like now she  
12 says, when your kids come over, no one smokes  
13 cigarettes, you're the only one smoking, you have to  
14 go outside to smoke, and then where is this drinking  
15 pattern coming from, why do you drink like this all  
16 of a sudden. I said, I don't know.

17 Q. So you've been trying to stop drinking  
18 and trying to stop smoking cigarettes?

19 A. I'm willing to go and try the patch,  
20 do the pills, whatever they got, you know, let's stop  
21 it.

22 Q. Other than trying to stop drinking and  
23 trying to stop smoking cigarettes, are there any  
24 other reasons why you have gone to see David Joseph

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1 Alpert?

2 A. No, sir.

3 Q. Do you have any idea as to why you've  
4 been drinking or drinking too much?

5 A. Yes.

6 Q. Why do you think you have?

7 A. Just to keep the, to keep the, to  
8 block things out, you know.

9 Q. What kinds of things have you been  
10 trying to block out?

11 A. Like what happened, you know, why I'm  
12 out of work; how come, you know, why my parents had  
13 to go so quickly, you know what I mean. Even though  
14 they were elderly, even though they were in their  
15 nineties, it just hurt, you know. And then there was  
16 another thing with one of my sister-in-laws. She  
17 stole my whole estate. There was nothing I could do  
18 about that.

19 Q. When you say she stole your whole  
20 estate, what do you mean by that?

21 A. I don't know, it just -- I know like  
22 when my -- she was my mom's beneficiary or something,  
23 man, and one day a lot of stuff just came up missing;  
24 I mean everything, all my mother's personal



<p style="text-align: right;">Page 30</p> <p>1 belongings and stuff, you know, and --</p> <p>2 Q. When did that happen?</p> <p>3 A. I'd say around, my mom passed in 2003,</p> <p>4 I believe, yeah.</p> <p>5 Q. When did your dad die?</p> <p>6 A. I'd say in '99.</p> <p>7 MR. CASEY: I'd like to have marked as</p> <p>8 Exhibit No. 1 to this deposition a six-page document</p> <p>9 which appears to be Plaintiff's Answers to</p> <p>10 Defendant's First Set of Interrogatories in this</p> <p>11 matter.</p> <p>12 (Marked Exhibit 1; Plaintiff's Answers</p> <p>13 to First Set of Interrogatories</p> <p>14 Propounded by the Defendant)</p> <p>15 Q. Mr. Dean, do you recognize the</p> <p>16 document that's been marked as Exhibit No. 1?</p> <p>17 A. Do I recognize this?</p> <p>18 Q. Yes.</p> <p>19 A. Yes, sir.</p> <p>20 Q. Is that your signature on the</p> <p>21 second-to-last page of Exhibit No. 1?</p> <p>22 A. Second to the last page, yes, sir.</p> <p>23 Q. You signed this document on March 4th</p> <p>24 of this year?</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Mm-hmm, yes.</p> <p>2 Q. At any time?</p> <p>3 A. Yes.</p> <p>4 Q. As a consequence of Lowe's unlawful</p> <p>5 conduct?</p> <p>6 A. Yes.</p> <p>7 Q. And you responded by identifying Lynn</p> <p>8 Community Health Center and a Sonya, S O N Y A, Pena,</p> <p>9 P E N A; correct?</p> <p>10 A. Yes.</p> <p>11 Q. Who is Sonya Pena?</p> <p>12 A. I guess she did the intake for me.</p> <p>13 She's the one that led me to this gentleman here,</p> <p>14 David Alpert. She did the intake, took all the</p> <p>15 information that led me to him.</p> <p>16 Q. When did you see Sonya Pena?</p> <p>17 A. About maybe two weeks ago.</p> <p>18 Q. Prior to seeing Sonya Pena and</p> <p>19 ultimately David Joseph Alpert, did you consult with</p> <p>20 any kind of physician or other healthcare</p> <p>21 professional of any kind regarding any physical or</p> <p>22 emotional consequences that you believe stem from</p> <p>23 your treatment by Lowe's?</p> <p>24 A. Just for my asthma and my health I go</p>
<p style="text-align: right;">Page 31</p> <p>1 A. I believe so, yes.</p> <p>2 Q. Just a few days ago; right?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Did you review the document carefully</p> <p>5 before you signed it?</p> <p>6 A. Yes, sir.</p> <p>7 Q. You knew you were signing it under the</p> <p>8 penalties of perjury; correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. By that you knew if you did not tell</p> <p>11 the truth completely that you literally could be</p> <p>12 prosecuted criminally for lying?</p> <p>13 A. Okay, right. Yes, sir.</p> <p>14 Q. So you reviewed the document carefully</p> <p>15 to ensure that it was accurate and truthful before</p> <p>16 you signed it; correct?</p> <p>17 A. Like, I spoke to my counsel, and</p> <p>18 there's a lot of things I don't quite understand; and</p> <p>19 what I did understand, that's what I --</p> <p>20 Q. Okay. Now, if you'll turn to the</p> <p>21 second page of Exhibit No. 1, specifically paragraph</p> <p>22 number six. We asked you to identify all physicians</p> <p>23 and/or healthcare professionals that you've</p> <p>24 consulted?</p>	<p style="text-align: right;">Page 33</p> <p>1 to Lynn Community Health and just a walk-in clinic</p> <p>2 there. I guess they got tired of me walking in.</p> <p>3 That's like -- I just got Mass Health. They used to</p> <p>4 give me free care.</p> <p>5 Q. Who at Lynn Community Health did you</p> <p>6 see?</p> <p>7 A. Just the staff there at the walk-in.</p> <p>8 I don't know these people's names.</p> <p>9 Q. Did you ever talk to any of the staff</p> <p>10 at Lynn Community Health about anything having to do</p> <p>11 with Lowe's?</p> <p>12 A. No, sir.</p> <p>13 Q. Did you ever talk to any of the staff</p> <p>14 at Lynn Community Health regarding any emotional or</p> <p>15 physical problems that you thought that you were</p> <p>16 suffering as a result of what happened to you at</p> <p>17 Lowe's?</p> <p>18 A. No.</p> <p>19 Q. Have you ever treated for any kind of</p> <p>20 depression or mental health related issues or stress</p> <p>21 or the like with anybody other than Sonya Pena and</p> <p>22 David Joseph Alpert at any time in your life?</p> <p>23 A. No.</p> <p>24 Q. Other than your asthma are you in good</p>

<p>1 going on for years.  2 Q. How many years?  3 A. For the last ten years anyway.  4 Q. What's the problem with your legs?  5 A. The reason why I'm not playing ball  6 now in the gentlemen's league is I've been getting  7 these hamstrings, I've been getting these real tight  8 knots in the back of my legs.  9 Q. Other than keeping you from playing  10 basketball, are there any other problems --  11 A. No.  12 Q. -- with your legs?  13 A. That's it.  14 Q. And other than your leg and feet  15 problems and the eczema you've just described, do you  16 have any other health issues?  17 A. No, but my girlfriend do because she's  18 just been diagnosed with high blood pressure and  19 diabetes. For some reason I'm compassionate to her  20 health too. When she's sick, it seem like I'm sick  21 too. That's how close we are.  22 Q. Who is Barry Rowell, R O W E L L?  23 A. Now, this gentleman, I believe he was,  24 like, a regional director or he was a, he was a</p>	<p>1 physical health?  2 A. I'm going through a mid-life thing,  3 you know. I'm afraid of getting old and the body  4 can't take what it used to, you know. I find certain  5 illnesses coming on now and I don't know what they  6 are. My feet hurt, my legs hurt, everything hurt.  7 Q. Well, let's be specific. Other than  8 asthma, you say that your feet hurt and your legs  9 hurt?  10 A. Well, you know, like --  11 Q. Let's be specific now. What about  12 your feet hurts?  13 A. Okay, you know, like, I guess they  14 getting bigger. I guess they're swelling up or  15 something. I don't know.  16 Q. When did that start?  17 A. It's been going on for many -- like,  18 also that comes with my asthma is the eczema. And  19 the eczema, like, it goes from certain parts. Like,  20 it used to be in my armpits and then it went to the  21 back of my knee and now it's on my foot.  22 Q. In terms of your feet hurting, when  23 did that start?  24 A. It's been going on for a, it's been</p>
<p>1 do to make all this go away? And that's what he said  2 to me.  3 Q. Did he say anything else?  4 A. That was it.  5 Q. What did you say in response?  6 A. I said, I don't know. I've never been  7 in this situation before, and I just don't know. I  8 need to go talk to my family and friends. I don't  9 know.  10 Q. Did he seem like a decent man?  11 A. Oh, yes.  12 Q. Did he treat you well?  13 A. Well, he spoke good, I mean, you know.  14 Q. Was there anything that he did or said  15 that upset you?  16 A. No, he was compassionate, he was cool.  17 Q. And to your knowledge he did not  18 witness or did not in any way participate in  19 investigating or dealing with the incident between  20 you and Danny Puccio?  21 A. I don't know that. I don't know what  22 he did. I don't know.  23 Q. All you know is that he participated  24 by telephone in an MCAD related fact finding or</p>	<p>1 person from Lowe's and I spoke with him at a  2 mediation before.  3 Q. A regional manager of some kind?  4 A. From out of Connecticut.  5 Q. A higher level manager than the people  6 with whom you worked at the store in Danvers?  7 A. Yes, sir.  8 Q. You saw him at the MCAD?  9 A. No, he was on the phone, he was on an  10 intercom.  11 Q. I see. And the first time you spoke  12 with him and I take it the only time you spoke with  13 him was at the MCAD?  14 A. Yes, sir.  15 Q. As it related to the --  16 A. The incident.  17 Q. -- the incident and some conciliation  18 or investigative conference?  19 A. Yeah.  20 Q. Okay. What did Mr. Rowell say at that  21 time?  22 A. Well, he was listening to what the  23 complaint was and what happened and he just -- he was  24 trying to be compassionate and he said, What can we</p>



1	A. Because I needed to speak to somebody about how they hired this person back, and I couldn't talk to nobody right there in my work place, so I thought I could speak to somebody who is pretty much neutral, you know. I don't know.	1	A. Right after the MCAD mediation.
2	Q. When was that?	2	Q. When first did you consult a lawyer about anything having to do with this matter or this case?
3	A. I'd say maybe 2002.	3	Q. When first did you consult a lawyer about anything having to do with this matter or this case?
4	Q. When in 2002?	4	A. Yes, sir.
5	A. I can't quite exactly remember the month, but I'm going to have to say it was in 2002.	5	Q. Springfield, Mass.?
6	Q. You were still employed by Lowe's?	6	Q. Springfield, Mass.?
7	A. I think I was. I think I was, yes.	7	Q. What about Sherri Smith, who is she?
8	Q. The name?	8	A. Yes.
9	A. Yes.	9	Q. And she called you back; correct?
10	Q. Was there any particular lawyer there?	10	A. I think she did, yeah.
11	A. Ms. Denise Page.	11	Q. When she called you back, you thanked her for calling you back?
12	Q. I guess.	12	A. Yes.
13	Q. I guess.	13	Q. She seemed responsive and decent?
14	A. Yes.	14	A. Yes.
15	Q. I guess.	15	Q. Oh, always.
16	A. I guess.	16	Q. Oh, always.
17	Q. I guess.	17	Q. Oh, always.
18	A. I guess.	18	Q. Oh, always.
19	Q. I guess.	19	Q. Oh, always.
20	A. I guess.	20	Q. Oh, always.
21	Q. I guess.	21	Q. Oh, always.
22	A. I guess.	22	Q. Oh, always.
23	Q. I guess.	23	Q. Oh, always.
24	A. I guess.	24	Q. Oh, always.

<p>1 A. Yes, sir.</p> <p>2 Q. And you reviewed it carefully before</p> <p>3 you signed it for accuracy?</p> <p>4 A. I guess at that time, yes.</p> <p>5 Q. Okay. And in Exhibit No. 2 you were</p> <p>6 doing your very best to tell the entire story of what</p> <p>7 you felt Lowe's did that was wrong to you?</p> <p>8 A. I guess right here, yeah, I was trying</p> <p>9 to explain, you know, to the best of my ability what</p> <p>10 happened.</p> <p>11 Q. You weren't rushed when you wrote</p> <p>12 this, were you, or when you provided this</p> <p>13 information?</p> <p>14 A. No.</p> <p>15 Q. No one forced you to sign it, did</p> <p>16 they?</p> <p>17 A. No.</p> <p>18 Q. No one rushed you in terms of your</p> <p>19 ability to read it carefully and reflect on it before</p> <p>20 you signed it; correct?</p> <p>21 A. No.</p> <p>22 Q. Is that correct?</p> <p>23 A. Nobody forced me to rush or do</p> <p>24 anything.</p>	<p>1 been marked as Exhibit No. 2, Mr. Dean?</p> <p>2 A. Yeah.</p> <p>3 Q. Is that your signature on the second</p> <p>4 page?</p> <p>5 A. Yes.</p> <p>6 Q. Did you prepare this document or did</p> <p>7 someone prepare it for you?</p> <p>8 A. Somebody prepared this for me.</p> <p>9 Q. Who?</p> <p>10 A. Okay. I might have told them what</p> <p>11 this is saying, I might have said this, but they</p> <p>12 prepared it. I don't know who prepared it.</p> <p>13 Q. Was it someone at Barron &amp; Stadfeld or</p> <p>14 somebody at the MCAD?</p> <p>15 A. Oh, no, that's a good one. I don't</p> <p>16 know between who did what. I think maybe somebody</p> <p>17 from MCAD.</p> <p>18 Q. On the second page below your</p> <p>19 signature there is the notary signature of a Jessica</p> <p>20 it looks like Thrall or Trill, I can't tell which.</p> <p>21 Do you know who that person is?</p> <p>22 A. No, sir.</p> <p>23 Q. You signed this document under oath;</p> <p>24 correct?</p>
<p>1 person who worked outside of the particular store in</p> <p>2 Danvers where you were working; correct?</p> <p>3 A. Yes.</p> <p>4 Q. And you knew by virtue of company</p> <p>5 policy, and by virtue of your own common sense, that</p> <p>6 you wanted to talk to somebody higher up in the</p> <p>7 company and at a distance from where you were</p> <p>8 working?</p> <p>9 A. Right.</p> <p>10 Q. So you could be sure you were treated</p> <p>11 fairly; right?</p> <p>12 A. Yes.</p> <p>13 Q. And you felt that she treated you</p> <p>14 fairly?</p> <p>15 A. She showed up at the mediation, you</p> <p>16 know, and that was it.</p> <p>17 Q. Before that when you called her she</p> <p>18 immediately called you back; right?</p> <p>19 A. Well, yeah, yeah, we kept, you know,</p> <p>20 like, you know, we kept in touch like that, you know,</p> <p>21 you know, because she wanted to always know how was I</p> <p>22 doing. How things doing, Dave; things all right?</p> <p>23 Oh, everything is lovely, Sherri; everything is nice.</p> <p>24 Q. She never did or said anything that</p>	<p>1 Q. So you thought carefully about Exhibit</p> <p>2 No. 2 before you signed it; correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And you signed it with the intent that</p> <p>5 this told the story of what you thought Lowe's had</p> <p>6 done --</p> <p>7 A. Pretty much.</p> <p>8 Q. -- wrong to you?</p> <p>9 A. Yes.</p> <p>10 Q. Is there anything left out?</p> <p>11 A. I don't know.</p> <p>12 Q. Why don't you read it and find out?</p> <p>13 A. That's correct, sir.</p> <p>14 *(Whereupon, the record was read)</p> <p>15 A. Yes.</p> <p>16 Q. And you intended to tell the entire</p> <p>17 story of what you thought Lowe's had done that was</p> <p>18 wrong toward you; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And you didn't leave anything out, did</p> <p>21 you?</p> <p>22 A. No, that's pretty much it.</p> <p>23 Q. Now, when you called Sherri Smith, you</p> <p>24 called her because she was a regional human resource</p>

1	Q. Did anyone outside of the Lowe's Danvers office ever give you the impression that they were not willing to help you?	1	A. No, no.
2	Q. Did anyone outside of the Lowe's Danvers office ever tell you or communicate to you in any fashion that you could not speak with people from Lowe's outside of that store?	2	A. No, no.
3	A. No.	3	A. No, no.
4	Q. Did anyone affiliated with the Lowe's Danvers office ever treat you poorly, correct?	4	Q. Or was treating you poorly, correct?
5	A. No.	5	A. Correct.
6	Q. Did anyone affiliated with the Lowe's Danvers office ever tell you or communicate to you in any fashion that you could not speak with people from Lowe's outside of that store?	6	Q. You thought she was treating you fine?
7	A. Well, I mean, like, as far as my job relations went, I mean, that was my duties. I mean, I had to speak to other people outside of the Danvers place because that was business, you know. Like, I used to check up on the guys that I used to train. There was guys that I used to train. When they were opening the store in Brockton, I had to train their RTM clerks, their return to manufacturers. I was training people and sometimes I would call the Brockton store and say, hey, Jim, how are you doing.	7	A. I think she was okay.
8	Q. So you knew you were free to talk to people outside of the Danvers office affiliated with Lowe's whenever you wanted, correct?	8	Q. You thought she was genuinely concerned how you were doing?
9	A. Well, I mean, like, as far as my job relations went, I mean, that was my duties. I mean, I had to speak to other people outside of the Danvers place because that was business, you know. Like, I used to check up on the guys that I used to train. There was guys that I used to train. When they were opening the store in Brockton, I had to train their RTM clerks, their return to manufacturers. I was training people and sometimes I would call the Brockton store and say, hey, Jim, how are you doing.	9	A. Yes.
10	Q. Or that you should not do so?	10	Q. You called her several times?
11	A. No.	11	A. No, no, no.
12	Q. So you knew you were free to talk to people outside of the Danvers office affiliated with Lowe's whenever you wanted, correct?	12	Q. How many times did you call her?
13	A. Well, I mean, like, as far as my job relations went, I mean, that was my duties. I mean, I had to speak to other people outside of the Danvers place because that was business, you know. Like, I used to check up on the guys that I used to train. There was guys that I used to train. When they were opening the store in Brockton, I had to train their RTM clerks, their return to manufacturers. I was training people and sometimes I would call the Brockton store and say, hey, Jim, how are you doing.	13	A. Maybe once, maybe twice, the most.
14	Q. Did anyone affiliated with the Lowe's Danvers office ever tell you or communicate to you in any fashion that you could not speak with people from Lowe's outside of that store?	14	Q. Okay. And you never told her about any problems you were having at work, correct?
15	A. Well, I mean, like, as far as my job relations went, I mean, that was my duties. I mean, I had to speak to other people outside of the Danvers place because that was business, you know. Like, I used to check up on the guys that I used to train. There was guys that I used to train. When they were opening the store in Brockton, I had to train their RTM clerks, their return to manufacturers. I was training people and sometimes I would call the Brockton store and say, hey, Jim, how are you doing.	15	A. Never.
16	Q. Did anyone affiliated with the Lowe's Danvers office ever tell you or communicate to you in any fashion that you could not speak with people from Lowe's outside of that store?	16	Q. Am I correct?
17	A. Well, I mean, like, as far as my job relations went, I mean, that was my duties. I mean, I had to speak to other people outside of the Danvers place because that was business, you know. Like, I used to check up on the guys that I used to train. There was guys that I used to train. When they were opening the store in Brockton, I had to train their RTM clerks, their return to manufacturers. I was training people and sometimes I would call the Brockton store and say, hey, Jim, how are you doing.	17	A. Yes, correct.
18	Q. Did anyone affiliated with the Lowe's Danvers office ever tell you or communicate to you in any fashion that you could not speak with people from Lowe's outside of that store?	18	Q. You felt as though you could have --
19	A. Well, I mean, like, as far as my job relations went, I mean, that was my duties. I mean, I had to speak to other people outside of the Danvers place because that was business, you know. Like, I used to check up on the guys that I used to train. There was guys that I used to train. When they were opening the store in Brockton, I had to train their RTM clerks, their return to manufacturers. I was training people and sometimes I would call the Brockton store and say, hey, Jim, how are you doing.	19	A. Yes, correct.
20	Q. Did anyone affiliated with the Lowe's Danvers office ever tell you or communicate to you in any fashion that you could not speak with people from Lowe's outside of that store?	20	Q. You felt as though you could be honest?
21	A. Well, I mean, like, as far as my job relations went, I mean, that was my duties. I mean, I had to speak to other people outside of the Danvers place because that was business, you know. Like, I used to check up on the guys that I used to train. There was guys that I used to train. When they were opening the store in Brockton, I had to train their RTM clerks, their return to manufacturers. I was training people and sometimes I would call the Brockton store and say, hey, Jim, how are you doing.	21	A. Well, you know, we never went into that area, you know, never.
22	Q. Did anyone affiliated with the Lowe's Danvers office ever tell you or communicate to you in any fashion that you could not speak with people from Lowe's outside of that store?	22	Q. But you knew you could call her?
23	A. Well, I mean, like, as far as my job relations went, I mean, that was my duties. I mean, I had to speak to other people outside of the Danvers place because that was business, you know. Like, I used to check up on the guys that I used to train. There was guys that I used to train. When they were opening the store in Brockton, I had to train their RTM clerks, their return to manufacturers. I was training people and sometimes I would call the Brockton store and say, hey, Jim, how are you doing.	23	
24	Q. Did anyone affiliated with the Lowe's Danvers office ever tell you or communicate to you in any fashion that you could not speak with people from Lowe's outside of that store?	24	



## KACZYNSKI REPORTING

14 (Pages 50 to 53)

1	A. Oh, yes.	1	Q. What did you tell him the problem was?	10	A. She would see the way they would leave
2	Q. And no one ever prevented you from	2	A. Well, you know, like, when I come back	11	the stuff in front of my door. She said, Dave,
3	doing that; correct?	3	A. Well, you know, like, when I come back	12	uh-huh, you need to talk to somebody about that. And
4	A. No.	4	off the weekend, all that stuff would be piled in	13	I said, Well, Kris, it doesn't matter. I can get
5	Q. I'm correct; right?	5	front of my door. I said maybe they can put it on	14	blue in the face talking, ain't nobody listening.
6	A. Yes.	6	that side or something, but no, just continued to put	15	Q. Did she remark about anything other
7	Q. Who's Terry Johnson?	7	the stuff in front of the door.	16	than returns, and by that I mean return items, being
8	A. Now, he was one of the big regional	8	Q. Well, did you tell Mr. Johnson	17	left in front of your door?
9	managers that would come to the store frequently,	9	anything other than the fact that things were being	18	A. That was pretty much it.
10	maybe twice a month, just to check on whatever he	10	piled in front of your door?	19	Q. Do you know who was leaving the
11	did, you know, make sure everything was running	11	A. That was pretty much it.	20	returns in front of your door?
12	smooth.	12	Q. You didn't tell him that you thought	21	A. Just associates from up in front. The
13	Q. Was he a decent guy?	13	that people were mistreating you by piling that stuff	22	kids would be bringing all the stuff back. When it
14	A. I thought so.	14	in front of your door; correct?	23	gets too bulky up in the front, it gets so congested,
15	Q. Did you ever speak with him?	15	A. No, I didn't say that to him.	24	they start moving it down to the back of the store
16	A. A few times.	16	Q. You didn't give him any sense that you		
17	Q. Was he approachable?	17	thought that people were retaliating against you by		
18	A. Oh, yes.	18	piling stuff in front of your door; correct?		
19	Q. Did you ever tell him that you were	19	A. No, I didn't say that.		
20	being mistreated in any way?	20	Q. Why not?		
21	A. Maybe once I complained to him about	21	A. Well, because, like, he was the		
22	all the stuff that kept being left in front of my	22	manager, I mean he was the regional manager, and I		
23	door. I might have went to him one time about that.	23	was just, you know, maybe asking him to talk to his		
24	I said, Terry, man, you got to be able to do	24	managers, you know, the store managers -- like Bob		
1	Estes, who was my warehouse manager who hired me --	1	Q. You never told her that you felt as		
2	tell them to stop putting the stuff in front of my	2	though you were being mistreated?		
3	door.	3	A. She seen it. I didn't have to tell		
4	Q. And these were returns that were being	4	her. She used to come and tell me.		
5	placed in front of your door?	5	Q. What did she say?		
6	A. Yes.	6	A. Oh, I'm sorry, David. Whatever, Kris,		
7	Q. And it's not that you cared about the	7	don't worry about it.		
8	returns being placed in that area, you just wanted	8	Q. Well, what was she commenting on, if		
9	them slightly to the side of the door; is that	9	you know?		
10	correct?	10	A. She would see the way they would leave		
11	A. Correct.	11	the stuff in front of my door. She said, Dave,		
12	Q. Who's Kris Lovett?	12	uh-huh, you need to talk to somebody about that. And		
13	A. She was the dispatcher who worked in	13	I said, Well, Kris, it doesn't matter. I can get		
14	the office right beside me. We came in together. We	14	blue in the face talking, ain't nobody listening.		
15	was hired together. We bonded because, like, she was	15	Q. Did she remark about anything other		
16	a real nice lady.	16	than returns, and by that I mean return items, being		
17	Q. Was she a friend?	17	left in front of your door?		
18	A. We became kind of friends, you know.	18	A. That was pretty much it.		
19	We never went out or anything or went to dinner or	19	Q. Do you know who was leaving the		
20	breakfast or nothing; but she would bring me coffee,	20	returns in front of your door?		
21	I would bring her coffee, you know.	21	A. Just associates from up in front. The		
22	Q. Was she someone you felt free to speak	22	kids would be bringing all the stuff back. When it		
23	with?	23	gets too bulky up in the front, it gets so congested,		
24	A. Oh, definitely, most definitely.	24	they start moving it down to the back of the store		

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1	where I was.	1	MR. CASEY: Yes.	1	MR. CASEY: Yes.
2	Q. Give me the names of the people who	2	(Whereupon, a recess was taken)	2	BY MR. CASEY:
3	were doing it?	3		3	Q. Now, Mr. Dean, just before the break I
4	A. I don't know these people. I don't	4		4	was asking you about who the people were who left
5	know who these kids are.	5		5	return items in front of the door to your work area,
6	Q. Did they know who you were?	6		6	and you said you didn't know who they were; correct?
7	A. They knew I was the RTM, yeah, they	7		7	
8	knew that, but I don't know who they were.	8		8	A. Okay.
9	Q. Did they know anything else about you?	9		9	Q. Was that your testimony?
10	A. No. Like what do you mean, know what?	10		10	A. Yes, sir.
11	Q. I'm trying to understand from you	11		11	Q. You did not know who they were?
12	whether or not the people who were leaving things in	12		12	A. Yes.
13	front of your door had any reason to do it?	13		13	Q. And I also asked you about why they
14	A. I guess they just thought it was a big	14		14	did it, and you said that some of the managers may
15	joke or something: Let's see how he climbs over	15		15	have told them to do it; is that your testimony?
16	this. I don't know. That's what they did. They	16		16	A. I said that, yes.
17	just left stuff in front of there.	17		17	Q. And I asked you if you had any idea as
18	Q. And you don't know their names?	18		18	to why the manager might have told them that, you
19	A. I do not know who these people are,	19		19	said you didn't; correct?
20	no.	20		20	A. Yes.
21	Q. Would you be able to recognize them if	21		21	Q. Is that correct?
22	you saw them?	22		22	A. Correct.
23	A. I guess so. I haven't been there in a	23		23	Q. Now, did anyone ever tell you who was
24	few years now. I guess if I see somebody I would	24		24	leaving things in front of your work area?
1	know who they were.	1		1	A. Well.
2	Q. How many people were involved in	2		2	Q. Just answer that question. Did anyone
3	leaving things in front of your door?	3		3	ever tell you who was leaving those things there?
4	A. They have different shift changes;	4		4	A. No.
5	different people come, different people go. Their	5		5	Q. Did anyone ever tell you why people
6	job and responsibility is to move the stuff from the	6		6	were leaving things in front of your work area?
7	back of the store and bring it to the warehouse.	7		7	A. No.
8	When they bring it to the warehouse, somebody told	8		8	Q. Did anyone ever tell you whether or
9	them to do that.	9		9	not the people who were leaving those things in front
10	Q. Do you know who told them to do that?	10		10	of your work area were instructed to do so by someone
11	A. I think he was one of the managers. I	11		11	in management?
12	think it might have been Glen Delorean or the other	12		12	A. Yes.
13	man -- or my manager, Bob Estes, might have been on	13		13	Q. Who told you what in that respect?
14	that too; I think he might have told them.	14		14	A. I would go back out --
15	Q. Do you have any idea why any of the	15		15	Q. First, who told you what; give me a
16	managers might have told those people to leave things	16		16	name?
17	in front of your door?	17		17	A. I don't remember the names too much,
18	A. No.	18		18	different departments. You know, like the rug
19	Q. You have no idea what their thought	19		19	department, they would come and leave, like,
20	process was?	20		20	remnants. Different departments would leave
21	A. No.	21		21	different things there. Like the plumbing department
22	Q. Or what their motivation was?	22		22	would leave all kinds of fixtures and stuff. The
23	A. No.	23		23	appliance department was good for leaving big
24	Can I use the restroom, please?	24		24	appliances, refrigerators, wash machines, dryers --

## KACZYNSKI REPORTING

(Pages 58 to 61)

1	you name it, it was there, you know. And like, it	1	told to do.	1	Q. Did both Estes and Godin say the same thing?
2	would get sent to me for me to put the price on it as	2	Q. And that didn't change?	2	Q. Did you think that that was
3	a mark down and put it back out on the floor and sell	3	A. It didn't --	3	A. Pretty much.
4	it as a, you know, might have a little ding on it or	4	Q. Is that correct?	4	A. Yes, I did.
5	a little bent knob or something. It would come to me	5	A. Yes, in a sense it is correct because	5	Q. In what respect?
6	and I would say, Listen, we can't get a store credit	6	when I first started working there, I would be able	6	A. I mean, like, at least tell the
7	on this. The manufacturer will not take it back. We	7	to go and open my door freely and be able to go in;	7	Q. In what respect?
8	can put a mark down price on it and put it back on	8	but then as the time went on, they were just piling	8	A. Yes, I did.
9	the floor.	9	it right in front of the door. How am I supposed to	9	Q. Did you have any idea why Ken Godin
10	Q. Things were brought by various people	10	get in and answer the phone? How am I supposed to	10	didn't tell people in the store not to leave things
11	within the store to your area for a determination as	11	get in, do what I'm supposed to do?	11	Q. Do you have any idea why Estes did not
12	to whether or not those items would be sent back to	12	Q. Did you ever complain to anyone about	12	A. No, I don't know why.
13	the manufacturer for this sort of --	13	appliances --	13	Q. Now, when the noose incident occurred,
14	A. Store credit.	14	A. All the time.	14	that was after you had been working with Danny Puccio
15	Q. -- store credit on the one hand and	15	Q. To whom did you complain?	15	A. I would say that, yes.
16	whether they would be put back out on the store floor	16	your door?	16	Q. And you and he were friendly before
17	for sale and a reduction on the other?	17	A. All the time.	17	
18	A. Right.	18	Q. To whom did you complain?	18	
19	Q. That was your job and that's why these	19	A. To my department manager, Bob Estes.	19	
20	things were brought to your work area, correct?	20	I told Ken Godin. Those were managers. I went	20	
21	A. Yes.	21	straight to them about that. I didn't talk to the	21	
22	Q. Throughout your entire tenure at	22	fellow associates or employees. I went straight to	22	
23	Lowes these things were brought to your attention	23	the management.	23	
24	and into your area for those purposes, correct?	24	Q. When did you complain to Bob Estes or	24	
1	Ken Godin about things being left in front of your	1	door?	1	
2	door?	2	Q. The day that the noose incident	2	
3	A. Say at the time of this incident right	3	happened things were in front of your door?	3	
4	now. I remember that day. There was a lot of stuff	4	in front of my door then.	4	
5	Q. Were they left at your door before you	5	saw the noose or after you saw the noose?	5	
6	A. Before, before.	6	Q. Before there was any problem with the	6	
7	noose, things were being left in front of your door;	7	correct?	7	
8	A. Yeah.	8	Q. Before you had any problem with the	8	
9	noose, you complained to Estes and Godin about things	9	being left in front of your door, correct?	9	
10	A. Yes, yes.	10	Q. What did they say?	10	
11	A. Yeah, that's your job, Dave; clean it	11	up.	11	
12	Q. Did you say anything in response?	12	A. No, I just went and did what I was	12	
13	Q. Did both Estes and Godin say the same	13	thing?	13	
14	A. Pretty much.	14	Q. Did you think that that was	14	
15	inappropriate on their part?	15	A. Yes, I did.	15	
16	Q. In what respect?	16	A. I mean, like, at least tell the	16	
17	A. Yes, I did.	17	Q. Did you have any idea why Estes did not	17	
18	Q. Is that correct?	18	tell people from within the store not to leave things	18	
19	A. It didn't --	19	in front of your door?	19	
20	Q. And that didn't change?	20	A. No, I don't know why.	20	
21	A. Correct.	21	Q. Now, when the noose incident occurred,	21	
22	Q. When did you complain to Bob Estes or	22	that was after you had been working with Danny Puccio	22	
23	the management.	23	A. I would say that, yes.	23	
24	Q. When did you complain to Bob Estes or	24	the management.	24	

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17 (Pages 62 to 65)

1	Q. So management as soon as you told them about this immediately investigated, immediately separated you and Puccio, and you had no further problems with Puccio, correct?	1	A. No.	1	A. No.	1	Q. You told Godin that?	1	Q. You told Godin that?
2	Q. Well, you told them you thought --	2	A. Yes.	2	A. Yes.	2	A. Yes.	2	A. Yes.
3	A. Kind of, yeah.	3	Q. Well, you told them you thought --	3	Q. Well, you told them you thought --	3	Q. Well, you told them you thought --	3	Q. Well, you told them you thought --
4	A. Correct.	4	Q. And you thought that they handled it properly, didn't you?	4	Q. And you thought that they handled it properly, didn't you?	4	Q. And you thought that they handled it properly, didn't you?	4	Q. And you thought that they handled it properly, didn't you?
5	Q. Okay, yeah.	5	Q. And a number of them asked you if there was something else they might do?	5	Q. And a number of them asked you if there was something else they might do?	5	Q. And a number of them asked you if there was something else they might do?	5	Q. And a number of them asked you if there was something else they might do?
6	A. They asked me like this: Dave, are you all right? Are you okay, Dave?	6	A. They asked me like this: Dave, are you all right? Are you okay, Dave?	6	A. They asked me like this: Dave, are you all right? Are you okay, Dave?	6	A. They asked me like this: Dave, are you all right? Are you okay, Dave?	6	A. They asked me like this: Dave, are you all right? Are you okay, Dave?
7	Q. And you told them you were?	7	Q. And you told them you were?	7	Q. And you told them you were?	7	Q. And you told them you were?	7	Q. And you told them you were?
8	A. Yes, yeah, I good.	8	A. Yes, yeah, I good.	8	A. Yes, yeah, I good.	8	A. Yes, yeah, I good.	8	A. Yes, yeah, I good.
9	Q. And they asked you, is there anything else, anything more that you'd like to us to do to make you feel okay, didn't they?	9	Q. And they asked you, is there anything else, anything more that you'd like to us to do to make you feel okay, didn't they?	9	Q. And they asked you, is there anything else, anything more that you'd like to us to do to make you feel okay, didn't they?	9	Q. And they asked you, is there anything else, anything more that you'd like to us to do to make you feel okay, didn't they?	9	Q. And they asked you, is there anything else, anything more that you'd like to us to do to make you feel okay, didn't they?
10	A. No.	10	A. No.	10	A. No.	10	A. No.	10	A. No.
11	Q. Didn't Ken Godin say that to you?	11	Q. Didn't Ken Godin say that to you?	11	Q. Didn't Ken Godin say that to you?	11	Q. Didn't Ken Godin say that to you?	11	Q. Didn't Ken Godin say that to you?
12	Q. You sure about that?	12	Q. You sure about that?	12	Q. You sure about that?	12	Q. You sure about that?	12	Q. You sure about that?
13	A. Yes, I am.	13	A. Yes, I am.	13	A. Yes, I am.	13	A. Yes, I am.	13	A. Yes, I am.
14	MR. CASEY: Let's have marked as Exhibit No. 3 a two-page document which is dated November 9, '01; it appears to be a document prepared by a Kenneth Godin.	14	MR. CASEY: Let's have marked as Exhibit No. 3 a two-page document which is dated November 9, '01; it appears to be a document prepared by a Kenneth Godin.	14	MR. CASEY: Let's have marked as Exhibit No. 3 a two-page document which is dated November 9, '01; it appears to be a document prepared by a Kenneth Godin.	14	MR. CASEY: Let's have marked as Exhibit No. 3 a two-page document which is dated November 9, '01; it appears to be a document prepared by a Kenneth Godin.	14	MR. CASEY: Let's have marked as Exhibit No. 3 a two-page document which is dated November 9, '01; it appears to be a document prepared by a Kenneth Godin.
15	(Marked Exhibit 3; Lowe's Incident Report dated 11/9/01)	15	(Marked Exhibit 3; Lowe's Incident Report dated 11/9/01)	15	(Marked Exhibit 3; Lowe's Incident Report dated 11/9/01)	15	(Marked Exhibit 3; Lowe's Incident Report dated 11/9/01)	15	(Marked Exhibit 3; Lowe's Incident Report dated 11/9/01)
16	Q. Have you seen Exhibit No. 3 before today, Mr. Dean?	16	Q. Have you seen Exhibit No. 3 before today, Mr. Dean?	16	Q. Have you seen Exhibit No. 3 before today, Mr. Dean?	16	Q. Have you seen Exhibit No. 3 before today, Mr. Dean?	16	Q. Have you seen Exhibit No. 3 before today, Mr. Dean?
17	A. I've never seen this before.	17	A. I've never seen this before.	17	A. I've never seen this before.	17	A. I've never seen this before.	17	A. I've never seen this before.
18	Q. Okay. And does that look like Ken Godin's signature at the bottom lower left-hand area on page two?	18	Q. Okay. And does that look like Ken Godin's signature at the bottom lower left-hand area on page two?	18	Q. Okay. And does that look like Ken Godin's signature at the bottom lower left-hand area on page two?	18	Q. Okay. And does that look like Ken Godin's signature at the bottom lower left-hand area on page two?	18	Q. Okay. And does that look like Ken Godin's signature at the bottom lower left-hand area on page two?
19	MR. FEDERICO: I'll object to the form. If you have any idea what his signature looks like. If you don't, you don't have to answer the question.	19	MR. FEDERICO: I'll object to the form. If you have any idea what his signature looks like. If you don't, you don't have to answer the question.	19	MR. FEDERICO: I'll object to the form. If you have any idea what his signature looks like. If you don't, you don't have to answer the question.	19	MR. FEDERICO: I'll object to the form. If you have any idea what his signature looks like. If you don't, you don't have to answer the question.	19	MR. FEDERICO: I'll object to the form. If you have any idea what his signature looks like. If you don't, you don't have to answer the question.
20	A. I don't know what his signature look like, sir.	20	A. I don't know what his signature look like, sir.	20	A. I don't know what his signature look like, sir.	20	A. I don't know what his signature look like, sir.	20	A. I don't know what his signature look like, sir.
21	Q. Mr. Godin writes on the first page in the third full paragraph, and I quote, "After the conversation with Danny I called David Dean to the	21	Q. Mr. Godin writes on the first page in the third full paragraph, and I quote, "After the conversation with Danny I called David Dean to the	21	Q. Mr. Godin writes on the first page in the third full paragraph, and I quote, "After the conversation with Danny I called David Dean to the	21	Q. Mr. Godin writes on the first page in the third full paragraph, and I quote, "After the conversation with Danny I called David Dean to the	21	Q. Mr. Godin writes on the first page in the third full paragraph, and I quote, "After the conversation with Danny I called David Dean to the
22	A. No.	22	A. No.	22	A. No.	22	A. No.	22	A. No.
23	Danny Puccio, did you?	23	Danny Puccio, did you?	23	Danny Puccio, did you?	23	Danny Puccio, did you?	23	Danny Puccio, did you?
24	A. No.	24	A. No.	24	A. No.	24	A. No.	24	A. No.

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(18 (Pages 66 to 69)

24	this the way he wanted it to be handled and if he	1	ASM office. Besides myself (Ken Godin) I had Mark
23	felt that I needed to do more to tell me immediately.	2	Gulioti ASM and Stephen Sexton ASM present to talk
22	fairly. "Close quote.	3	to David." Close quote. Is that true; did you speak
21	Is that a fair characterization of the	4	with Godin, Gulioti, and Sexton on that day?
20	conversation between you and Godin in the presence of	5	A. I kind of remember that, yes.
19	Gulioti and Sexton?	6	Q. And Godin goes on to write, quote, "I
18	want it to be. I just want, like, this to be	7	immediately told him" -- meaning you -- "exactly what
17	resolved, that's all.	8	Dan had told me. I also told him that Dan had given
16	Q. You're not understanding my question	9	me his two-week notice to end his employment with
15	correctly. I'm asking you whether or not Godin said	10	Lowes. David then said he did not want to see Dan
14	to you --	11	leave over this." Close quote. Is that the way the
13	A. No, he did not, sir.	12	conversation happened?
12	Q. -- do you feel as though I'm handling	13	A. I guess it kind of went that way. I'm
11	this the way you wanted it to be handled?	14	not sure.
10	Q. What about that is not accurate?	15	Q. At the end of this document, at least
9	A. No.	16	on the first page Godin writes, and I quote, "I
8	Q. It's not?	17	completely agreed with him" -- meaning you?
7	A. No, sir.	18	A. No, no.
6	Q. What about that is not accurate?	19	Q. Hold on. Let me rephrase the
5	Q. This part here where he says I	20	question.
4	completely agreed with him. I then asked him if he	21	Godin writes at the end of the first
3	felt that I was handling this the way he wanted it.	22	page, quote, "I then asked him" -- meaning you?
2	It's not the way I wanted it to be handled. Handle	23	A. Mm-hmm.
1	it the way it's supposed to be handled, not the way I	24	Q. "...if he felt that I was handling
24	him too much.		
23	A. Just like I said, I didn't care for		
22	believe that you couldn't trust him?		
21	Q. Did he ever give you any reason to		
20	A. No.		
19	Q. Did he ever mistreat you in any way?		
18	A. I didn't care for him too much.		
17	Q. Was he a decent guy?		
16	A. One of the ASMs, one of the managers.		
15	Q. Who is Mark Gulioti?		
14	A. No.		
13	indicate to you that you couldn't trust him?		
12	Q. Did he ever do or say anything to		
11	know.		
10	A. Yeah, he was, hi, how are you, you		
9	Q. Was he friendly to you?		
8	A. No.		
7	you?		
6	gave you any reason to believe that he didn't like		
5	Q. Did he ever do or say anything that		
4	A. No.		
3	gave you any reason to believe that he was dishonest?		
2	Q. Did he ever do or say anything that		
1	A. Wes was cool, he was all right.		
24	Q. Was he a decent guy?		
23	warehouse.		
22	worked in the shipping and receiving area inside the		
21	A. Wesley Anderson was an associate that		
20	Q. Okay. Who is Wesley Anderson?		
19	A. Yes, sir.		
18	that they're incorrect?		
17	all remember you saying that, it's your testimony		
16	Q. So if Godin and Gulioti and Sexton		
15	A. Yes.		
14	Q. You deny that?		
13	A. No, I did not. I did not say that.		
12	that you felt that he had reacted rapidly and fairly?		
11	Q. Okay. Do you remember saying to him		
10	A. I don't remember it.		
9	remember it?		
8	Q. You don't deny it; you just don't		
7	A. No, I don't remember him saying that.		
6	if you wanted him to do anything more?		
5	Q. Okay. Do you remember him asking you		
4	A. I don't remember him saying that.		
3	just not remember it?		
2	Q. Do you deny that he said it or do you		
1	A. I don't remember him saying that.		

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19 (Pages 70 to 73)

<p>1 Q. I'm asking you a different question. 2 I understand what you're saying. I'm asking you did 3 he ever give you any reason to believe that you 4 couldn't trust him? 5 A. No. 6 Q. Did he ever give you any reason to 7 believe that he was dishonest? 8 A. No. 9 Q. Did he tell you on the day of the 10 incident that he was available to talk to if you ever 11 needed to talk to him? 12 A. No. 13 Q. Who is Steve Sexton? 14 A. Now, I believe Steve was the assistant 15 manager under Bob Estes in the warehouse, I believe. 16 I'm not quite sure about the last name Sexton, but 17 there was a Steve and I believe maybe that was him. 18 Q. Was he a decent guy? 19 A. He was all right. 20 Q. Did he ever do or say anything that 21 gave you any reason to think that he was dishonest? 22 A. No. 23 Q. Did he ever do or say anything that 24 gave you any reason to believe that you couldn't</p>	<p>1 trust him? 2 A. You know, like, for a long time I 3 thought that maybe he had a little something to do 4 with why all the stuff was being piled up in front of 5 my door, I really felt that. 6 Q. You didn't have any reason to know one 7 way or the other, you just thought it might be the 8 case? 9 A. He'd usually be the first person there 10 in the mornings and he had to see whoever was 11 bringing this stuff. And by me talking to him about 12 the stuff being left in front of my door, I would 13 just think that he would have told them, no, don't 14 bring that right there, put that over there, but I 15 guess -- you know, I think he knew a little something 16 about the stuff being put in front of my door. 17 Q. But you're not sure, you're guessing? 18 A. Yeah. 19 Q. Did he ever give you any reason to 20 believe that you couldn't trust him? 21 A. He had a different behavior than 22 everybody else. Certain people act different ways. 23 He was -- I don't know, I don't know. 24 Q. What about Kat Richard, who was she?</p>
<p>1 Q. Now, she was our human resource person 2 at the Danvers store. 3 Q. What was she like, describe her for 4 me? 5 A. I thought she was a pleasant lady, she 6 was all right. 7 Q. Decent person? 8 A. I would think so, yes. 9 Q. Approachable? 10 A. Yes. 11 Q. Someone you could talk to? 12 A. Yes. 13 Q. And she sat in on a discussion between 14 you and Frank Romano regarding the incident with 15 Danny Puccio, right? 16 A. Okay. 17 Q. Do you remember that? 18 A. I kind of, yes. 19 Q. In that discussion Romano told you 20 that the matter was being addressed, and that Lowe's 21 was going to take steps to rectify the situation, 22 didn't he? 23 A. Correct. 24 Q. And he told you that he had confronted</p>	<p>1 Danny and that Danny had given his two weeks' notice? 2 A. Correct. 3 Q. He told you that he had moved Danny to 4 the lawn and garden area to finish out his notice 5 period and you would not have any more contact with 6 him? 7 A. Correct. 8 Q. And he asked you how you felt about 9 how the situation was addressed and you told him that 10 all the managers had acted quickly and 11 professionally? 12 A. Okay. 13 Q. Is that correct? 14 A. Correct. 15 Q. And you also told him that you and 16 Danny had been friends and that you had worked well 17 together, correct? 18 A. Mm-hmm, that's what I thought, yeah, 19 correct. 20 Q. You also told Mr. Romano that you did 21 not want anyone to get into trouble or lose their job 22 over this? 23 A. Correct. 24 Q. And Kat Richard told you that if there</p>

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## KACZYNSKI REPORTING

20 (Pages 74 to 77)

1	was anything that you needed to talk with her about going forward that you should feel free to come see her?	3	A. Correct.
4	Q. And you never did go to complain to her about anything, did you?	7	A. No.
8	Q. Danny Puccio apologized to you after this incident, didn't he?	9	A. Yeah.
10	MR. CASEY: I want to have marked as Exhibit No. 4 a document dated November 8, 2001, two pages in length, which appears to be Mr. Dean's statement regarding the Puccio incident.	14	(Marked Exhibit 4; Lowe's Incident Report dated 11/8/01)
15	Q. Mr. Dean, do you recognize the document that's been marked Exhibit No. 4?	17	A. Yeah.
18	Q. That's your handwriting?	20	A. Yes, sir.
21	Q. And that's your signature on the second page?	23	A. Yes, sir.
24		24	
1	No one forced you to write that, correct?	2	A. Correct.
3	Q. You were given all the time you needed to write that, correct?	4	A. Yes, sir.
5	Q. What you wrote there was true, right?	7	A. Yes, sir.
8	Q. You didn't leave anything out, did you?	9	A. Yes, sir.
10	A. Let me just go over and see.	11	Q. Sure. Why don't you read into the record what you wrote and that will serve two purposes: I'll be sure I know what your handwriting says, and you have a chance to review what you wrote. Read into the record exactly what this document says.
16	A. To whom this may concern: Today, 11/8, around 10:30 a.m. I was with two representatives doing buy backs for one and just basic RTMs with the other when a fellow associate, Danny, says to me, Dave, I left something for you on your desk. I responded, Yeah, Danny, I'll get to it when I am through with these two reps. When I made it, when I made it back to my desk, one of the reps	23	Q. And this is what you wrote?
24		24	A. Correct.
1	humorous to others can be very insulting to most. I'm all right, but we as associated, as associated and people don't need this kind of behavior. Thank you for your time. David Dean.	4	Q. You were asked by the manager on duty to write a statement reflecting your side of the story, correct?
7	A. Yes, sir.	8	Q. And you didn't leave anything out?
11	A. Yes.	10	Q. And what you wrote was truthful?
13	A. Very truthful.	14	Q. This is how you felt at the time, correct?
15	A. Yes, sir.	17	Q. Kat Richard was in the store every day, wasn't she?
19	A. Yeah.	20	Q. And you would frequently see her in the store, correct?
23	A. Yes.	23	Q. She was in the store after you were
24		24	
1	and myself could not believe what was on my desk. It was a black hangman's noose which was very distasteful and rather embarrassing. So I says to Danny, What's all this about? And he just started laughing. But there was nothing funny and that's when I brought this --	6	Q. Infraction?
7	A. -- infraction to manager on duty, or MOD, in the warehouse. Soon afterward I was called to the office to hear my side of the story and to make sure I was okay about what had just happened.	10	I'm all right, but no one needs to be hurt or humiliated this way with distasteful, childish behavior. Basically my fellow associates are nice people. We all try to get along with each other and when one crosses the line, such as this, this creates matters, especially from someone who you trust to be a friend. I am sorry for the situation that came about. I just want to work in a safe, friendly environment without the ugly side of racism -- I can't read it.
21	Q. Rearing?	22	A. Rearing its ugly head. We're all about, we're all adults here and what might be
23		23	
24		24	



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1 transferred into the lawn and garden center; correct?  
 2 A. Yes.  
 3 Q. And you continued to see her?  
 4 A. Yes.  
 5 Q. You never complained to her about  
 6 being transferred into the lawn and garden center,  
 7 did you?  
 8 A. No.  
 9 Q. You never told her you were having any  
 10 problems with management or otherwise in the lawn and  
 11 garden center, did you?  
 12 A. No.  
 13 Q. At the time you agreed to the transfer  
 14 into the lawn and garden center, didn't you?  
 15 A. Yes.  
 16 Q. And you thought it would give you a  
 17 fresh start; correct?  
 18 A. Yeah.  
 19 Q. And you said that to Mr. Estes;  
 20 correct?  
 21 A. Yeah.  
 22 Q. After you were transferred into the  
 23 lawn and garden center, did you experience any  
 24 problems on the job at Lowe's?

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1 A. Well, things just seemed different  
 2 after that, you know, because people would keep  
 3 coming out to me, why are you in lawn and garden, how  
 4 come you ain't in your office, and I had to explain  
 5 this over and over and over again.  
 6 Q. Other than people asking you why are  
 7 you in lawn and garden, did you experience any kind  
 8 of problems at work for Lowe's after you were  
 9 transferred into the lawn and garden center?  
 10 A. Until that one time there was one  
 11 incident when I came out the lawn and garden, I came  
 12 into the employee cafeteria to get something cold,  
 13 and I had seen that they had rehired Danny Puccio,  
 14 and that's when I couldn't believe my eyes.  
 15 Q. Okay. So just so I understand your  
 16 testimony, you agreed to be transferred into the lawn  
 17 and garden center?  
 18 A. Mm-hmm.  
 19 Q. You went over there to work, you  
 20 didn't have any problems whatsoever with Lowe's or  
 21 Lowe's management or having in any respect to do with  
 22 your job after you were transferred into the lawn and  
 23 garden center other than the fact that you learned on  
 24 one occasion that the company had rehired Danny

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1 Puccio; is that correct?  
 2 A. Right, right.  
 3 Q. How did you learn that he had been  
 4 rehired?  
 5 A. I went into the cafeteria to get my  
 6 soft drink, and the next room right beside there  
 7 where we did our orientation where they were bringing  
 8 their new associates in, I seen Danny come out of  
 9 there with an apron on and I'm like, oh, my God.  
 10 Q. He wasn't, you later found out,  
 11 working in the Danvers store; correct?  
 12 A. I don't know. That was the first time  
 13 I seen him after that incident. When he resigned or  
 14 whatever, that was the, that was the last time I seen  
 15 him because I didn't see him no more after that. I  
 16 knew that he was rehired somewhere.  
 17 Q. When was that that you saw him with  
 18 the apron on?  
 19 A. I really can't tell you, I can't tell  
 20 you. It had to be during the, maybe the end of the  
 21 summer or maybe the beginning of the fall because it  
 22 was still kind of warm out.  
 23 Q. You think it was the end of the  
 24 summer?

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1 A. Maybe.  
 2 Q. And you then worked for another three  
 3 or four months after that; correct?  
 4 A. About right.  
 5 Q. And you didn't have any other problems  
 6 after you saw him with Danny Puccio; correct?  
 7 A. Well, well, there was one problem.  
 8 Like, when I was in the RTM in my office there, I had  
 9 a set schedule. I would come in every morning at  
 10 7:30 and I would leave every afternoon at 3:30. When  
 11 they put me out in lawn and garden, man, my hours  
 12 went from six o'clock in the morning one day until  
 13 two in the afternoon; the next day they wanted me to  
 14 come in at midnight to work until six o'clock in the  
 15 morning. Just the fluctuation of the schedule, it  
 16 was really bizarre. One minute I'd be working three  
 17 to eleven and -- oh, they just kept playing with my,  
 18 you know what I mean.  
 19 Q. Were there legitimate business reasons  
 20 for that scheduling?  
 21 A. No, they just wanted to, I guess,  
 22 bother me.  
 23 Q. That's what you think, they wanted to  
 24 bother you?

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1 A. I really believe that.  
 2 Q. Who was it that was doing that?  
 3 A. Whoever was making up the schedule.  
 4 Q. You don't know?  
 5 A. I'm going to say Glen DeLorean.  
 6 Q. Do you know or are you guessing?  
 7 A. I'm going to say Glen DeLorean, he did  
 8 it.  
 9 Q. That's your testimony under oath, you  
 10 know that he was doing it?  
 11 A. I believe he was, yes.  
 12 Q. How do you spell his last name?  
 13 A. D E capital L O R E A N, DeLorean.  
 14 Q. What was his supervisory relationship  
 15 to you; was he your direct manager?  
 16 A. Yes.  
 17 Q. When did you start working for him, as  
 18 soon as you were transferred into lawn and garden?  
 19 A. Yes.  
 20 Q. And why do you think that he was  
 21 trying to give you a hard time?  
 22 A. I don't know, sir. I really don't  
 23 know.  
 24 Q. Do you have any idea what his

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1 motivation was?  
 2 A. No, I really don't. I just know all  
 3 of a sudden by me coming in at one set schedule and  
 4 now all of a sudden I'm coming in on Saturdays,  
 5 Sundays, I might have Monday off, and it was just --  
 6 it was hard.  
 7 Q. Do you know whether or not that  
 8 fluctuating schedule was typical of people working in  
 9 the lawn and garden center, and if you don't know  
 10 tell me?  
 11 A. I don't know, sir.  
 12 Q. You don't know one way or the other?  
 13 A. I don't know.  
 14 Q. Did you ever speak with Mr. DeLorean  
 15 about this matter as to why your schedule was  
 16 fluctuating?  
 17 A. I think I might have brought it to his  
 18 attention one time and he said, Hey, that's the way  
 19 it is.  
 20 Q. Did you say anything further to him?  
 21 A. No.  
 22 Q. And you never complained to anybody  
 23 about the schedule?  
 24 A. No, I just went, did my work.

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1 Q. You never complained to anybody at  
 2 Lowe's about how Mr. DeLorean was treating you, did  
 3 you?  
 4 A. No.  
 5 Q. Why did you leave Lowe's?  
 6 A. Glen DeLorean again at the end of my  
 7 shift, I did my shift, and I think it was five  
 8 o'clock that evening, and he says, Hey, we need you  
 9 to stay late. I said, I'm sorry, I can't. I have a  
 10 prior commitment. I have a part-time job that I have  
 11 to go get to. And he says, Well, Dave, you're not  
 12 going to leave me no choice. I said, Glen, do  
 13 whatever you want to, man. I've had it up to here  
 14 anyway. I went to my other job. He said, Hey, if  
 15 you leave, I'm going to have to write you up and  
 16 that's grounds for termination. I said, Whatever.  
 17 The next day, that was my day off and  
 18 I didn't go back to work, and I think he gave me a  
 19 phone call telling me that when I come in to come  
 20 straight -- don't punch in, just come straight to see  
 21 him, Glen DeLorean. And I knew what that meant. I  
 22 didn't even go back. I just didn't even go back.  
 23 Q. Did you call to tell Mr. DeLorean or  
 24 to tell anyone else at Lowe's that you would not be

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1 returning to work?  
 2 A. No, I didn't.  
 3 Q. So you don't know if you were going to  
 4 be terminated; you were just guessing that might  
 5 happen?  
 6 A. Yeah.  
 7 Q. But it could have been short of  
 8 termination; it could have been a warning?  
 9 A. I don't think so. I don't think so.  
 10 Q. It could have been?  
 11 A. It could have been. I guess it could  
 12 have been.  
 13 Q. You didn't know?  
 14 A. I didn't know, but what I did know is  
 15 that I was tired of being, you know, kicked around  
 16 like that.  
 17 Q. Well, you say kicked around, but you  
 18 said under oath a few minutes ago you didn't know  
 19 what other people's schedules had been in lawn and  
 20 garden?  
 21 A. I didn't.  
 22 Q. They may have had fluctuating  
 23 schedules; correct?  
 24 A. They could have. I don't know.

22 (Pages 82 to 85)



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1 Q. Just like yours?  
 2 A. It wasn't -- I didn't see too many  
 3 people in there at midnight but me. I was the only  
 4 one in there.  
 5 Q. How many times did you go in at  
 6 midnight?  
 7 MR. FEDERICO: Object to the form,  
 8 argumentative.  
 9 A. A couple times, few times.  
 10 Q. Why were you asked to work late at  
 11 night on those occasions?  
 12 A. To water the plants.  
 13 Q. When did that happen?  
 14 A. To put, to, to water the plants and to  
 15 put certain stock away.  
 16 Q. When did that happen?  
 17 A. Right after when they put me in lawn  
 18 and garden.  
 19 Q. That was in April of 2002?  
 20 A. I believe so, yes, sir.  
 21 Q. So on a couple of occasions in your  
 22 first week or so working in lawn and gardens, they  
 23 had asked you either to stay or come in late to water  
 24 plants and put stock away?

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1 A. Yes.  
 2 Q. And that never happened again after  
 3 that?  
 4 A. It happened a few times. That  
 5 happened for months. It happened for a few months.  
 6 Q. It happened a few times over the  
 7 course of months?  
 8 A. Yes.  
 9 Q. Did you ever ask why they wanted you  
 10 to water the plants late at night?  
 11 A. They said that's your job description.  
 12 No problem.  
 13 Q. Was anyone else in the store when you  
 14 were there watering the plants?  
 15 A. There might have been a few other  
 16 people in other departments, you know, putting stuff  
 17 up over there in them departments.  
 18 MR. CASEY: I need to break for lunch  
 19 now. I have a meeting that I have to attend for  
 20 roughly an hour. Why don't we break for an hour,  
 21 come back at one o'clock, and we shouldn't be  
 22 terribly long after that before we finish up, okay?  
 23 MR. FEDERICO: Well, sure.  
 24 (Whereupon, a lunch recess was taken)

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1 AFTERNOON SESSION  
 2 CONTINUED DIRECT EXAMINATION  
 3 BY MR. CASEY:  
 4 Q. Back on the record after the lunch  
 5 break. Mr. Dean, I want to have several documents  
 6 marked as exhibits to the deposition.  
 7 I'd like to have marked Exhibit No. 5  
 8 a one-page document that is entitled Lowe's Employee  
 9 Orientation Training Record.  
 10 (Marked Exhibit 5; Lowe's Employee  
 11 Orientation Training Record)  
 12 Q. Do you recognize this document,  
 13 Mr. Dean, Exhibit No. 5?  
 14 A. Yes, sir.  
 15 Q. Is that your signature near the bottom  
 16 of the page?  
 17 A. Yes, sir.  
 18 Q. And by signing is it fair to say that  
 19 it indicates that you received training regarding the  
 20 subject matters that are checked in the columns above  
 21 your signature?  
 22 A. Yes, mm-hmm.  
 23 Q. So that, among other things, you  
 24 received training regarding the company's open door

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1 policy?  
 2 A. Yes.  
 3 Q. And you understood what the company's  
 4 open door policy was?  
 5 A. No, I kind of forgot.  
 6 Q. But you knew it at the time; correct?  
 7 A. I guess so, yes.  
 8 Q. And that is that if you have a problem  
 9 at any time with your direct supervisor or with  
 10 co-workers, you can always go to people in the  
 11 company above your manager in the corporate hierarchy  
 12 or outside of the particular store in which you work  
 13 to make sure that you're getting objective people  
 14 from Lowe's to look at the situation?  
 15 A. Yes.  
 16 Q. You're aware of that?  
 17 A. Yes.  
 18 MR. CASEY: I want to have marked as  
 19 Exhibit No. 6 a one-page document that relates to  
 20 Mr. Dean's employment with Lowe.  
 21 (Marked Exhibit 6; Acknowledgement  
 22 dated 1/6/01)  
 23 Q. Mr. Dean, do you recognize this  
 24 document?

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1 A. Yes.  
 2 Q. And is that your signature toward the  
 3 bottom of the page?  
 4 A. Yes, sir.  
 5 Q. This is also something that you signed  
 6 as part of your orientation and training before you  
 7 actively commenced work with Lowe's; is that correct?  
 8 A. Yes, sir.  
 9 Q. And did you read this document before  
 10 you signed it?  
 11 A. Yes.  
 12 Q. So you knew that in Section I, where  
 13 it says "Notice of Lowe's policies," you were  
 14 instructed that, and I quote, "If you are subjected  
 15 to discrimination, including sexual harassment, or if  
 16 you are aware of a violation of any of the policies  
 17 above, report it immediately to your store/location  
 18 manager...If immediate satisfactory action is not  
 19 taken, call or write Lowe's Internal Audit  
 20 Department..." and then it provides both an address  
 21 and a telephone number, close quote. Do you see  
 22 that?  
 23 A. Yes, I see that.  
 24 Q. And you retained a copy of this

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1 document during the course of your employment at  
 2 Lowe's; correct?  
 3 A. I believe so, yes.  
 4 Q. So that you knew that if you had a  
 5 problem with what your managers were doing or how you  
 6 were being treated in any fashion by anyone while you  
 7 were employed at Lowe's that you could always go to  
 8 your department head, and indeed you could go above  
 9 the head of your department head, and call or write  
 10 Lowe's Internal Audit Department to address any  
 11 complaints you might have?  
 12 A. Correct.  
 13 Q. You understood not only you could do  
 14 that but that you were supposed to do that?  
 15 MR. FEDERICO: Object to the form.  
 16 You can answer.  
 17 A. Yes, correct.  
 18 Q. Who is Janie Jordan?  
 19 A. That was a friend of mine.  
 20 Q. Is that a girlfriend?  
 21 A. She was, yes.  
 22 Q. A woman you lived with?  
 23 A. In the past.  
 24 Q. Okay. Are you still friends with her?

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1 A. Yes.  
 2 MR. CASEY: I'd like to have marked as  
 3 Exhibit No. 7 your application for employment at  
 4 Lowe's dated January 2, 2001 which is in two pages.  
 5 (Marked Exhibit 7; Application for  
 6 Employment dated January 2, 2001)  
 7 Q. Do you recognize Exhibit No. 7?  
 8 A. Yes.  
 9 Q. Is that your signature at the bottom  
 10 of the first page?  
 11 A. Yes, sir.  
 12 Q. And in the lower left-hand column on  
 13 the second page is that your --  
 14 A. Yes, it is, sir.  
 15 Q. -- signature?  
 16 A. Yes.  
 17 Q. Okay. Now, you knew when you were  
 18 filling out this employment application that you were  
 19 to be truthful in doing so; correct?  
 20 A. Correct.  
 21 Q. And you were, in fact, answering these  
 22 questions fully and truthfully; correct?  
 23 A. Yes.  
 24 Q. You see in the section entitled "Work

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1 History" on page one of Exhibit 7 near the bottom --  
 2 A. Work history, yes.  
 3 Q. -- you were asked to identify your  
 4 last three or four employers immediately preceding  
 5 this application for employment at Lowe's; correct?  
 6 A. Yes, sir.  
 7 Q. And you identified your then current  
 8 employer as New Boston?  
 9 A. Yes.  
 10 Q. Is that correct?  
 11 A. Yes, sir.  
 12 Q. And you were, in fact, working for New  
 13 Boston in January of 2001; is that correct?  
 14 A. I guess, yes.  
 15 Q. And you had been working there for a  
 16 couple months?  
 17 A. Yes, sir.  
 18 Q. What were you doing for New Boston?  
 19 A. It was a temp agency, and they would  
 20 send us out on assignments to different places. I  
 21 did work at McDonald's warehouse where we would store  
 22 the products in the truck to be sent to the local  
 23 McDonald's throughout the state.  
 24 Q. And prior to that you had been working

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1 at Home Depot?  
 2 A. Yes, sir.  
 3 Q. And I take it from your job  
 4 application that you worked at Home Depot between  
 5 March of 2000 and November of 2000, approximately  
 6 eight months?  
 7 A. Yes, sir.  
 8 Q. Is that correct?  
 9 A. Yes, sir.  
 10 Q. What did you do for Home Depot?  
 11 A. That's where I learned to do my RTM  
 12 work for Lowe's. I was a RTV which there is return  
 13 to vendor.  
 14 Q. Okay. And did you work for Home Depot  
 15 at any time other than that eight-month period  
 16 between March of the year 2000 and November of the  
 17 year 2000?  
 18 A. No, sir, just what's there.  
 19 Q. Just that eight-month period?  
 20 A. Yes.  
 21 Q. All right, and you're sure of that?  
 22 A. Yes.  
 23 Q. Why did you leave Lowe's -- I'm  
 24 sorry -- why did you leave Home Depot?

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1 A. Because it was, it was a little bit  
 2 difficult for me to get there because at this  
 3 particular store, it was in Salem, and by me living  
 4 in Lynn it was, like they just started a bus schedule  
 5 there, and I used to have to depend on friends to  
 6 pick me up and bring me to work.  
 7 Q. Was there any reason -- did you leave  
 8 voluntarily?  
 9 A. Yes.  
 10 Q. You were not terminated?  
 11 A. Yes.  
 12 Q. Yes, what?  
 13 A. I was terminated.  
 14 Q. You were terminated?  
 15 A. Yes.  
 16 Q. So you left involuntarily?  
 17 A. Okay, yes.  
 18 Q. Why were you terminated?  
 19 A. There was an accident where a fork, a  
 20 forklift, a fork jack rolled over my foot; and when  
 21 it rolled over my foot, their policy was to send me  
 22 straight to the hospital. When I went to the  
 23 hospital, they did some tests and stuff; and they  
 24 found something, some marijuana, in my system.

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1 Q. So they terminated you for testing  
 2 positive for marijuana?  
 3 A. Yes, sir.  
 4 Q. And they told you that?  
 5 A. Yes, sir.  
 6 Q. And you knew that on or about the day  
 7 that you were terminated in November --  
 8 A. Yes, sir.  
 9 Q. -- of 2000?  
 10 A. Yes, sir.  
 11 Q. You knew that before you filled out  
 12 this work application?  
 13 A. I filled out -- no, no, I -- like when  
 14 I filled -- they gave me a drug test when I filled  
 15 out this work application.  
 16 Q. No, no, listen to me for a second.  
 17 When you prepared the information that's contained on  
 18 the document that's been marked as Exhibit 7 --  
 19 A. Yes.  
 20 Q. -- you did that work in January of the  
 21 year 2001; correct?  
 22 A. Yes.  
 23 Q. As of January 2d, 2001 you knew that  
 24 you had been terminated by Home Depot for testing

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1 positive for marijuana; correct?  
 2 A. Yes.  
 3 Q. So when you prepared this work history  
 4 portion of the job application for Lowe's, you were  
 5 not entirely truthful, were you?  
 6 A. Oh, I was truthful because they tested  
 7 me there too.  
 8 Q. Well, but when you were asked for the  
 9 reason for leaving Home Depot you answered, not  
 10 enough hours?  
 11 A. Oh, right.  
 12 Q. Correct, and that was not entirely  
 13 truthful, was it?  
 14 A. Not entirely.  
 15 Q. Because, in fact, you had been  
 16 terminated for testing positive for marijuana;  
 17 correct?  
 18 A. Correct.  
 19 Q. You didn't tell anybody at Lowe's that  
 20 you had been terminated by Home Depot for testing  
 21 positive for marijuana?  
 22 A. No, I didn't, sir.  
 23 Q. And when you filled out the date at  
 24 the bottom of page one of Exhibit 7, you made an



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1 error and filled it out as 1/2/00 when, in fact, you  
 2 prepared this document on 1/2/01 as is reflected  
 3 correctly on the second page of Exhibit 7; correct?  
 4 A. Correct.  
 5 Q. Now, in your complaint to the MCAD --  
 6 and I'll show you again the document that was marked  
 7 as Exhibit No. 2 -- you stated under oath to the MCAD  
 8 that you had worked at Home Depot for two years, and  
 9 that's in the second sentence of the second paragraph  
 10 under the section entitled, "The particulars are."  
 11 Do you see that? I quote, "I was hired as a Return  
 12 to Manufacturer, a position in which I had two years  
 13 of experience at Home Depot." Close quote. Have I  
 14 read it accurately?  
 15 A. Yes, sir.  
 16 Q. And when you wrote that to the MCAD,  
 17 you were not being entirely truthful, were you?  
 18 A. Well, I didn't have all my, my dates  
 19 correct, you know. I was just saying this off the  
 20 top of my head.  
 21 Q. So in your complaint to the MCAD, you  
 22 said that you had two years' experience at Home Depot  
 23 when, in fact, you only had eight months' experience  
 24 there; correct?

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1 A. I think I had more than eight months  
 2 at Home Depot.  
 3 Q. Look again at the first page of  
 4 Exhibit 7 where it indicates you worked at Home Depot  
 5 from March of 2000 to November of 2000; do you see  
 6 that?  
 7 A. Yes, sir.  
 8 Q. Is that accurate?  
 9 A. I guess it is, yes. I'm not real  
 10 sure, but I guess it is.  
 11 Q. Prior to that you had worked at Arrow  
 12 Electronics?  
 13 A. Yes.  
 14 Q. For approximately four years?  
 15 A. Yes, sir.  
 16 Q. Did you leave there voluntarily or  
 17 involuntarily?  
 18 A. I left there voluntarily.  
 19 Q. Under what circumstances?  
 20 A. The assignment, what it says here, it  
 21 had ended. Arrow Electronics used to, it was, used  
 22 to be Ritchie Electronics, but Ritchie was sold to  
 23 Arrow, and then once they were sold and they were  
 24 going through their transition or switching the

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1 companies, they let a lot of people go, and I was one  
 2 of them.  
 3 MR. CASEY: I want to have marked as  
 4 Exhibit No. 8 a copy of the Complaint and Jury Claim  
 5 that you filed in superior court in this matter.  
 6 (Marked Exhibit 8; Complaint and Jury  
 7 Claim)  
 8 Q. Do you recognize the document that has  
 9 been marked as Exhibit No. 8, Mr. Dean?  
 10 A. I guess this is the first time I ever  
 11 seen this.  
 12 Q. Is that right, you haven't seen it  
 13 before?  
 14 A. I believe this might be the first time  
 15 I ever seen this.  
 16 Q. Do you know who Chris O'Connor is?  
 17 A. No.  
 18 Q. Just yes or no, did you speak with  
 19 anyone affiliated with Mr. Federico's law firm to  
 20 prepare a document for filing suit in this case, just  
 21 yes or no?  
 22 A. No.  
 23 MR. CASEY: I want to have marked as  
 24 Exhibit No. 9 a performance review related document

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1 dated at least with respect to your signature  
 2 August 31, '01; it's one page.  
 3 (Marked Exhibit 9; Lowe's Strategic  
 4 Training & Achievement Review/Career  
 5 Development Review dated August 31,  
 6 2001)  
 7 Q. Do you recognize Exhibit No. 9?  
 8 A. Yes, sir.  
 9 Q. This is the first performance related  
 10 review that you received in writing from Lowe's after  
 11 you commenced work there in January of '01; correct?  
 12 A. Yes, sir.  
 13 Q. And it's signed by Robert Estes, your  
 14 supervisor, and by yourself at the lower left-hand  
 15 corner at the bottom of the page?  
 16 A. Yes, sir.  
 17 Q. You had a chance to review this  
 18 document before you signed it; correct?  
 19 A. Yes, sir.  
 20 Q. And you thought that it fairly and  
 21 accurately reviewed your work for the first eight  
 22 months of your tenure at Lowe's; correct?  
 23 A. Yes, sir.  
 24 Q. And you knew that you had an

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1 obligation to provide comments in a section entitled  
2 "Employee Comments" if you wanted to disagree with or  
3 add to anything that was contained in your review;  
4 correct?

5 A. That's correct.

6 Q. And you knew that you could not only  
7 write on the front page but you could go on and write  
8 on the back of the page if you needed more space to  
9 state your comments; correct?

10 A. Yes, sir.

11 Q. Mr. Estes noted in the supervisor  
12 comments section that you needed, quote, "some  
13 improvement on his" -- meaning your -- "attendance  
14 and on the organization...his paperwork, like OFR and  
15 cleared RTM reports." Close quote. Do you see that?

16 A. Yes, sir.

17 Q. Did I read it accurately?

18 A. Yes, sir.

19 Q. And you did not disagree with that  
20 assessment; correct?

21 A. Correct.

22 Q. You thought that was a fair  
23 assessment?

24 A. Yes.

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1 Q. You had missed some time from work?

2 A. I had time to use, you know.

3 Q. And you missed time because both you  
4 had some car problems with an old van that you were  
5 driving and because you had asthma; correct?

6 A. Yes, sir.

7 Q. And, in fact, Mr. Estes was fairly  
8 understanding about that, wasn't he?

9 A. Sure, he was fair.

10 Q. And you generally found him to be fair  
11 in the way he dealt with you, didn't you?

12 A. Yes, he hired me.

13 Q. And he was a pretty -- well, to use a  
14 common term, he was a pretty laid back, easy-going  
15 guy, wasn't he?

16 A. Real big guy.

17 Q. And laid back?

18 A. Yes.

19 Q. People liked him?

20 A. I guess so, yes.

21 Q. Nice guy?

22 A. Yeah.

23 Q. And after you transferred from the  
24 return area to the lawn and garden area, he continued

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1 to be at least your second level supervisor; correct?

2 A. Yes.

3 Q. And you never registered any

4 complaints with him regarding how you were being  
5 treated in the lawn and garden center, did you?

6 A. No, sir.

7 Q. I'm correct; right?

8 A. Yes, you are.

9 Q. And he was an approachable guy; if you  
10 needed to speak with him, he was around and always  
11 willing to listen, wasn't he?

12 A. Yes.

13 MR. CASEY: I want to mark as Exhibit  
14 No. 10 a one-page document that appears to be your  
15 review effective January 6, '02 which you signed on  
16 January 30, '02.

17 (Marked Exhibit 10; Lowe's Strategic  
18 Training & Achievement Review/Career  
19 Development Review dated January 30,  
20 2002)

21 Q. Do you recognize Exhibit No. 10?

22 A. Yes, sir.

23 Q. And is that your signature at the  
24 lower left-hand portion of that document?

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1 A. Yes, it is sir.

2 Q. Now, as of January '02, according to  
3 your earlier testimony in this deposition today,  
4 people had been for some time, for several months at  
5 that point, leaving return merchandise and appliances  
6 and the like in front of your door to your work area,  
7 which was called the cage; is that correct?

8 A. Yes.

9 Q. You did not make note of that in your  
10 employee comment section of this document, did you?

11 A. What training -- oh, employee  
12 comments. Major concerns are appliances, tools, and  
13 other items needs to be marked with what's wrong with  
14 it, plus receipts of purchases, that helps the return  
15 process turnover.

16 Q. My question is, in the employee  
17 comment section of this review, you did not make any  
18 note or comment regarding --

19 A. No, I did not, sir.

20 Q. -- return items being placed in front  
21 of the door leading to the cage area; correct?

22 A. All I wrote here --

23 Q. Is that correct?

24 A. Correct.



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1 Q. You did talk about the return process  
2 and your major concern being that appliances, tools,  
3 and other items be properly marked with what's wrong  
4 with them?

5 A. Right.

6 Q. That was the only concern that you  
7 expressed?

8 A. Exactly.

9 Q. In this review, as opposed to the  
10 review that you received some five months earlier,  
11 you received four "does not meet standard"  
12 indications out of the twelve performance criteria,  
13 whereas in the first review you received all "meets  
14 standard" scores; is that correct?

15 A. Correct, sir.

16 Q. And you did not complain about that;  
17 you thought it was fair that Bob Estes registered a  
18 score of "does not meet standard" on four out of the  
19 twelve criteria; correct?

20 A. Correct.

21 MR. FEDERICO: I'll object to the  
22 form.

23 Q. Your answer was correct?

24 A. Correct, sir, but that's like when

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1 that time.

2 Q. That was the reason you were missing  
3 work, because of your asthma?

4 A. Yes.

5 Q. And that was the only reason; correct?

6 A. Yes.

7 MR. CASEY: I want to now have marked  
8 as Exhibit No. 11 a one-page employee performance  
9 report dated January 20, 2002.

10 (Marked Exhibit 11; Lowe's Employee  
11 Performance Report dated January 20,  
12 2002)

13 Q. Do you recognize Exhibit No. 11?

14 A. Yes, sir.

15 Q. And is it, in fact, true that on or  
16 about January 20th of 2002, some two weeks after you  
17 received your performance review which has been  
18 marked as Exhibit No. 10, Mr. Estes and Mr. Vaughn  
19 sat down with you to talk about the condition of the  
20 RTM cage and to tell you that you needed to do a  
21 better job with it?

22 A. Yes, sir.

23 MR. FEDERICO: Excuse me, if I can  
24 object to the form that Exhibit 10 is dated after

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1 this -- if I can, if I can speak.

2 Q. You can when your lawyer asks you  
3 questions, if he'd like to.

4 A. Okay.

5 Q. At this time, in January of '02,  
6 Mr. Estes wrote, "David has the knowledge and can  
7 certainly perform this job. I think that his  
8 constant time away from work is directly affecting  
9 the productivity. He also needs to be more organized  
10 especially with all the reports and OFR log." Do you  
11 see that he writes that, have I accurately read it?

12 A. Yes, sir.

13 Q. And you did not indicate on this  
14 document or otherwise that you disagreed with that,  
15 did you?

16 A. No, I didn't write that on this  
17 document.

18 Q. In fact, you did agree with that  
19 assessment, didn't you?

20 A. Kind of.

21 Q. You had missed a fair amount of work  
22 time in December of 2001; correct?

23 A. I can't quite remember how much I  
24 missed, but I think I said my asthma was acting up at

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1 Exhibit 11. You indicated the opposite. Exhibit 11  
2 is dated before Exhibit 10.

3 MR. CASEY: Well, I guess it is in  
4 terms of its signature. That's a fair statement.

5 MR. FEDERICO: Well, it is in terms of  
6 the signature of the supervisor.

7 MR. CASEY: Fair statement. My  
8 apologies, I was wrong about that. I was looking at  
9 the date in the upper right-hand corner of  
10 Exhibit 10, which is January 6 of '02.

11 MR. FEDERICO: Right.

12 Q. And you did not disagree with this  
13 performance initial warning, did you?

14 A. I did not, no, I didn't.

15 MR. CASEY: I want to have marked as  
16 Exhibit No. 12 a document dated April 1, 2002  
17 concerning Mr. Dean's performance.

18 (Marked Exhibit 12; Lowe's Employee  
19 Performance Report dated April 1,  
20 2002)

21 Q. Do you recognize Exhibit No. 12,  
22 Mr. Dean?

23 A. Yes, sir.

24 Q. This was a second written warning for



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1 poor job performance that Mr. Vaughn and Mr. Estes  
 2 provided to you and discussed with you on or about  
 3 April 1 of 2002; correct?  
 4 A. Correct.  
 5 Q. And you signed acknowledging receipt  
 6 of this in the lower right-hand corner; correct?  
 7 A. Yes, sir.  
 8 Q. And you had an opportunity to write in  
 9 employee comments and you did not; correct?  
 10 A. I was told to read this here, which I  
 11 did, and sign it.  
 12 Q. Well, you also saw that there was a  
 13 section provided for employee comments; correct?  
 14 A. Correct.  
 15 Q. And that section is provided in all  
 16 the performance review templates that Lowe's uses or  
 17 at least that you saw; correct?  
 18 A. Yes.  
 19 Q. And you knew because you had provided  
 20 employee comments with respect to prior performance  
 21 documents that you had the right to insert comments  
 22 if you wished to do so; correct?  
 23 A. Correct.  
 24 Q. And you did not make any comments on

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1 this document?  
 2 A. No, I didn't.  
 3 Q. Nor did you ever complain to anybody  
 4 at Lowe's about this second written warning, did you?  
 5 A. No, sir.  
 6 Q. Do you know who Andy Ramos was?  
 7 A. No.  
 8 Q. You do not challenge the fact that  
 9 Andy Ramos was in the Danvers Lowe's facility  
 10 conducting a review of operations in or about --  
 11 A. Inventory.  
 12 Q. -- March of 2002, do you?  
 13 MR. FEDERICO: I'll object; if he  
 14 doesn't know who he is, how can he observe that he  
 15 was there.  
 16 Q. Do you know from time to time that  
 17 people from outside the particular Danvers store came  
 18 to that store on behalf of Lowe's and performed  
 19 various inventory reviews?  
 20 A. Yes, sir.  
 21 Q. Do you have any reason to believe that  
 22 Andy Ramos was not truthful in telling Mr. Vaughn and  
 23 Mr. Estes that he found your work area to be poorly  
 24 managed?

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1 MR. FEDERICO: I'll object; same  
 2 objection, he can't fairly be asked to speculate  
 3 about Mr. Ramos.  
 4 Q. Do you have any reason to believe that  
 5 anybody affiliated with Lowe's reported falsely  
 6 regarding the status of your work site and/or  
 7 regarding the quality of your work as they reviewed  
 8 it in an inventory in March of '02?  
 9 MR. FEDERICO: Same objection; it just  
 10 simply calls for speculation which wouldn't be useful  
 11 testimony.  
 12 MR. CASEY: I don't know. You may  
 13 answer.  
 14 A. All I know is on this one particular  
 15 time when we did this inventory, all the stuff that  
 16 was outside of my door, when I came in that morning I  
 17 couldn't even get in the office because they took all  
 18 the stuff from outside and put it inside my office.  
 19 Q. You didn't write that down in the  
 20 employee comment section in this document, did you?  
 21 A. No, I didn't.  
 22 Q. The document reads, "Just recently we  
 23 had inventory, and Andy Ramos was conducting some  
 24 reviews for operations. When Andy went to view the

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1 RTM cleared report to see it was work[ed] properly,  
 2 he found that it was not worked at all. Dave had  
 3 been instructed and shown how to print this on  
 4 several occasions, both by myself and Steve Vaughn.  
 5 To this day the report is still not printed or  
 6 worked." Close quote. Have I read that accurately?  
 7 A. Yes, sir.  
 8 Q. And you read that on April 1 of 2002  
 9 before you signed this document; correct?  
 10 A. Correct.  
 11 Q. And you did not take issue with or  
 12 challenge the accuracy of that statement, did you?  
 13 A. No, sir.  
 14 Q. And you agree with it as you sit here  
 15 today, don't you?  
 16 A. Yes, but they were informed, Bob Estes  
 17 and Steve Vaughn was informed. That's why when you  
 18 said something about another name, Steve, I thought  
 19 that was his name, but this now is real clear to me.  
 20 Steve Vaughn had it -- where I was, my job  
 21 responsibility, became too overwhelming; I had too  
 22 much stuff to do. Between sorting out all the stuff  
 23 that was there and printing out the reports, that  
 24 took a long time. What was more important to them

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1 was clean this up, get this straightened up. That  
 2 took a majority of my time.  
 3 Q. And you didn't print the reports?  
 4 A. As to their satisfaction.  
 5 Q. Or at all; correct?  
 6 A. I did print them. That's what they  
 7 wrote down. That's why I gave them no arguments  
 8 because I knew my time was going to be short there  
 9 because of the way they kept coming with these  
 10 reports.  
 11 Q. You knew that you were supposed to  
 12 print RTM cleared reports and you were not doing it  
 13 to their satisfaction; correct?  
 14 A. Correct.  
 15 MR. CASEY: I'd like to have marked as  
 16 Exhibit No. 13 a one-page employee performance report  
 17 concerning Mr. Dean also dated April 1 of 2002.  
 18 (Marked Exhibit 13; Lowe's Employee  
 19 Performance Report dated April 1,  
 20 2002)  
 21 Q. Do you recognize Exhibit 13?  
 22 A. Yes, sir.  
 23 Q. Is that your signature toward the  
 24 bottom of the page?

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1 A. Yes, it is.  
 2 Q. And this was the third written warning  
 3 that you had received in the course of four months  
 4 and it also followed a performance review in which  
 5 four out of twelve criteria were identified as your  
 6 not meeting standard; correct?  
 7 A. Correct.  
 8 Q. This was a final written warning,  
 9 meaning that you could be terminated if there was any  
 10 further problem with your work; correct?  
 11 A. Correct.  
 12 Q. And you did not challenge the accuracy  
 13 or the fairness of this final written notice, did  
 14 you?  
 15 A. Never.  
 16 Q. In fact, when you were given a final  
 17 written warning regarding the RTM area being in an  
 18 "atrocious" state, you agree that it would be better  
 19 for you to move to the lawn and garden center so that  
 20 you could have an opportunity still to succeed with  
 21 Lowe's; correct?  
 22 A. Correct.  
 23 Q. Did Mr. Estes ever say or do anything  
 24 to you or in your presence that in any way reflected

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1 that he was a racist?  
 2 A. I guess I might have seen something.  
 3 I don't know.  
 4 Q. I'm not asking you to speculate. This  
 5 is a serious question.  
 6 A. I don't know. I can't answer that. I  
 7 don't know. I don't know.  
 8 Q. Did anybody affiliated with Lowe's  
 9 ever do or say anything to you or in your presence  
 10 that you thought reflected they were a racist?  
 11 MR. FEDERICO: I'll just object to the  
 12 term "racist." I don't think it would elicit  
 13 favorable or unfavorable testimony since the claim is  
 14 racial discrimination. We're not claiming the people  
 15 were racists. I think that term -- just requesting  
 16 that the question be reformed.  
 17 Q. You can answer the question. Did  
 18 anyone affiliated with Lowe's ever do or say anything  
 19 to you that reflected that they had any animosity  
 20 toward you because you were a black man?  
 21 A. I felt that.  
 22 Q. Who did what that made you feel that  
 23 way? Be precise, who? First give me the name.  
 24 A. Oh, see, that's where -- they were

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1 unfair to me; Steve Vaughn was unfair to me and Bob  
 2 Estes was unfair to me.  
 3 Q. When?  
 4 A. Through my whole ordeal there. After  
 5 I was hired and after they see me doing a good job  
 6 and they see how I behave myself, other people, I  
 7 notice a change in their attitude toward me, and I  
 8 knew it was a matter of time before they were in  
 9 cahoots to get me moved out of that warehouse.  
 10 Q. You're saying that Bob Estes and the  
 11 people who work with you --  
 12 A. Bob Estes hired me.  
 13 Q. Here's a guy who hires you; after he  
 14 sees you're doing a good job, he wants to get rid of  
 15 you?  
 16 A. Mm-hmm, because I also heard the lady  
 17 who replaced me as the RTM clerk, it was told to me  
 18 by Kris Lovett that she told Bob, I want his job, and  
 19 that was when I was moved out.  
 20 Q. Well, what, if anything, did Mr. Estes  
 21 ever do or say that suggested that he moved you out  
 22 of that job or treated you improperly in any fashion  
 23 because of your race?  
 24 A. Nothing.

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1 Q. What, if anything, did Mr. Vaughn ever  
2 say or do that led you to suspect that he mistreated  
3 you in any respect because of your race?

4 A. Nothing.

5 Q. So do I understand your testimony to  
6 be you thought these guys didn't like you and they  
7 liked somebody else more?

8 A. (Witness nods head).

9 Q. Is that correct?

10 A. Yes.

11 Q. And it had nothing to do with your  
12 race; is that correct?

13 MR. FEDERICO: I'll object to the  
14 form.

15 A. Correct.

16 MR. CASEY: That's all I have.

17 MR. FEDERICO: I have no questions.

18 MR. CASEY: Thank you, Mr. Dean.

19 THE WITNESS: Thank you, sir.

20 (Whereupon, the deposition was  
21 concluded at 1:51 p.m.)  
22  
23  
24

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1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS. )  
3 )  
4

5 I, Cynthia A. Powers, Shorthand Reporter and  
6 Notary Public in and for the Commonwealth of  
7 Massachusetts, do hereby certify that there came  
8 before me on the 10th day of March 2005, at 10:10  
9 a.m., the person hereinbefore named, who was by me  
10 duly sworn to testify to the truth and nothing but  
11 the truth of his knowledge touching and concerning  
12 the matters in controversy in this cause; that he was  
13 thereupon examined upon his oath, and his examination  
14 reduced to typewriting under my direction; and that  
15 the deposition is a true record of the testimony  
16 given by the witness.  
17  
18

19 I further certify that I am neither attorney  
20 or counsel for, nor related to or employed by, any of  
21 the parties to the action in which this deposition is  
22 taken, and further that I am not a relative or  
23 employee of any attorney or counsel employed by the  
24 parties hereto or financially interested in the  
action.

IN WITNESS WHEREOF, I have hereunto set my  
hand and affixed my notarial seal this 16th day of  
March 2005.

CYNTHIA A. POWERS  
NOTARY PUBLIC  
MY COMMISSION EXPIRES  
JULY 2, 2010

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1 I have read the foregoing transcript and the  
2 same contains a true and accurate recording of my  
3 answers given to the questions therein set forth.  
4  
5

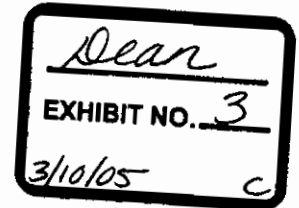
6 \_\_\_\_\_  
7 DAVID H. DEAN  
8

9 On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, the  
10 undersigned notary public, personally appeared David  
11 H. Dean, proved to me through satisfactory evidence  
12 of identification, which were \_\_\_\_\_,  
13 to be the person whose name is signed on the  
14 preceding or attached document, and who swore or  
15 affirmed to me that the contents of the document are  
16 truthful and accurate to the best of his knowledge.  
17  
18

19 \_\_\_\_\_  
20 NOTARY PUBLIC  
21  
22  
23  
24



## LOWE'S

LOWE'S INCIDENT REPORT  
(Please Print)

SUBJECT OR INCIDENT NAME	STORE	DATE	CASE # IF APPLICABLE
DAVID DEAN vs. DANNY Puccio	1094	11-9-01	

On Thursday Nov. 11 I (Kenneth Godin) was called to Rec. to look into an incident that transpired a few minutes earlier. Upon my arrival I asked David Dean what happened. He then brought me into the RTR office where he showed a noose made of rope laying on his desk. I immediately asked everyone on the Rec. dock who was responsible for this. Dan Puccio immediately told me that he did it. I then asked Dan to come with me. I took him off the dock to talk to him about what he had done. Dan then stated to me that they were playing with the rope when he was asked if he knew how to make a noose. He stated that he did. He stated that David also asked if he could make one (noose). Dan replied yes, he then proceeded to make one. Dan stated that he then left it for David on his desk, because of his curiosity of the noose. Dan thought nothing more of the situation than horse play. He said that he told David he (Dan) left the noose on his desk and I quote "I left you a present."

After completing the conversation with Dan, he then gave me his 2 week notice. He stated that he could not believe that his friend David is doing this to him.

After the conversation with Danny I called David Dean to the ASM Office. Besides myself (Kenneth Godin) I had Mark Gullotti ASM and Stephen Sexton ASM present to talk to David. I immediately told him exactly what Dan had told me. I also told him that Dan had given me his 2 week notice to end his employment with Lowe's. David then said he did not want to see Dan leave over this. He just wanted to make sure that it was addressed because it hurt him. He then told me that he was very hurt because he considered Dan to be his friend. He then stated that this made him feel very uncomfortable and did not want things of this nature to happen at work. I completely agreed with him. I then asked him if he felt that I was handling this the way he wanted it to be handled.

PREPARED BY: Ken Godin

DATE:

REVIEWED BY:

DATE:

**LOWE'S****LOWE'S INCIDENT REPORT**  
(Please Print)

SUBJECT OR INCIDENT NAME	STORE	DATE	CASE # IF APPLICABLE
--------------------------	-------	------	----------------------

and if he felt that if I needed to do more to tell me immediately. He said no he felt that I reacted very rapidly and fairly. I then asked David to fill out an incident report to document what had happened. He agreed and filled out the report.

To back up a little I also sent Danny home for the day so that the situation could not be further aggravated. I felt that under the circumstances this was the best way to avoid anymore incidents since both parties were very emotional.

PREPARED BY:

DATE:

REVIEWED BY:

DATE:

L 0035



LOWE'S

**LOWE'S INCIDENT REPORT**  
(Please Print)

Dear  
EXHIBIT NO. 4  
3/10/05 C

SUBJECT OR INCIDENT NAME	STORE	DATE	CASE # IF APPLICABLE
DAVID DEAN	1094	11/8/01	

To whom this may concern;

Today 11/8 around 10:30 AM I was with two "reps" doing "buy backs" for one and just basic "RTMs" with the other when a fellow associate "Dannu" says to me - "Dave I left something for you on your desk" I responded "Yeah Dannu, I'll get to it when I'm through here with these two reps." When I made it back to my desk one of the reps and myself could not believe what was on my desk. It was a "black hanging moose" which was very distasteful and rather embarrassing, so I says to "Dannu" "Whats all this about?" And he just started laughing, but there was nothing funny, and that when I brought this infraction to a "MOP" in the warehouse. Soon afterwards I was called to the office to hear my side of the story, and to make sure I was ok about what had just happened. I'm alright but no one needs to be hurt or humiliated.

-ed

PREPARED BY:

DATE:

REVIEWED BY:

DATE:



**LOWE'S****LOWE'S INCIDENT REPORT**  
(Please Print)

SUBJECT OR INCIDENT NAME	STORE	DATE	CASE # IF APPLICABLE
--------------------------	-------	------	----------------------

this way with distasteful, childish, behavior. Basically my fellow associates are nice people we all try to get along with each other and when one crosses the line such as this, this created matters, especially from some one who you trust to be a friend. I'm sorry for the situation that's come about. I just want to work in a safe, friendly environment with out the ugly side of racism, racism is ugly period. Where all adults here, and what might be, harmless remark to others can be very insulting to most. I'm alright, but we as associates and people don't need this kind of behavior.

Thank You for time

Daniel H. Dean RTM

PREPARED BY:	DATE:	REVIEWED BY:	DATE:
Daniel H. Dean	11/8/01	[Signature]	11/8/01

(2)

**WORK HISTORY****LIST WORK HISTORY BEGINNING WITH THE CURRENT OR MOST RECENT EMPLOYERS AND MILITARY SERVICE**

Company Name <u>NEW BOSTON</u> Tel. # <u>978-774-1800</u>	What type of work do you do? <u>TEMP</u>
Address <u>85 CONSTITUTIONAL LANE</u>	Name and title of your supervisor? <u>JIM</u>
City <u>DANVERS</u> State <u>MA</u> Zip <u></u>	Reason for leaving? <u>PRESENT</u>
Company Name <u>HOME DEPOT</u> Tel. # <u>978-741-9299</u>	What type of work did you do? <u>RTV CLERK</u>
Address <u>5 TRADERS WAY</u>	Name and title of your supervisor? <u>SHERRI</u>
City <u>SALISBURY</u> State <u>MA</u> Zip <u>01970</u>	Reason for leaving? <u>NOT WORKING ANYMORE</u>
Company Name <u>ARROW ELECTRONICS</u> Tel. # <u>978-974-4976</u>	What type of work did you do? <u></u>
Address <u>85 CONCORD ST</u>	Name and title of your supervisor? <u></u>
City <u>N. READING, MA</u> State <u>MA</u> Zip <u>01985</u>	Reason for leaving? <u></u>
Company Name <u>AMERICAN STAFFING</u> Tel. # <u>Yellow Pages</u>	What type of work did you do? <u>TEMP</u>
Address <u>UNION ST</u>	Name and title of your supervisor? <u>PAUL</u>
City <u>Lynn</u> State <u>MA</u> Zip <u>01902</u>	Reason for leaving? <u>ASSIGNMENT ENDED</u>

**EMPLOYMENT DATES**

From	Month	Year
To	Month	Year
Pay Rate		
From	Month	Year
To	Month	Year
Pay Rate		
From	Month	Year
To	Month	Year
Pay Rate		
From	Month	Year
To	Month	Year
Pay Rate		

May we contact your present employer for a work reference? Yes ☒ No ☐  
If yes, when?

To assist us in verifying your prior employment, have you ever worked under another name?  
☐ Yes ☒ No If yes, list name

**Availability**

What type of employment are you seeking?  
(Check each classification you are willing to work.)

☒ Full-Time ☐ Part-Time ☐ Seasonal

Length of employment desired:

☒ Over a year ☐ Less than a year

Summer/Seasonal - From  to

How soon can you start working for Lowe's?

Number of hours you would prefer to work each week 48

Maximum number of hours you can work each week ?

We hire people to work during hours we're closed to the public as well as times we are open for business. To help us consider you for a job that matches your availability, please tell us the earliest time and the latest time you can work each day by completing the chart on the right.

Day	Earliest Time	Latest Time
Sun.		<u>Afternoon / Closing</u>
Mon.		<u>ALL DAY</u>
Tue.		
Wed.		
Thu.		
Fri.		
Sat.		

If hired, the hours you have listed will be taken into consideration in our scheduling process. If you have any conflicts, please list them:

**Important**

Dear  
EXHIBIT NO. 7

3/10/05 c

**APPLICANT'S AGREEMENT AND CERTIFICATION. READ BEFORE SIGNING.**

I hereby certify that the facts set forth in the above employment application are true and complete to the best of my knowledge. I understand that, if employed, falsified statements on this application may result in disciplinary action up to and including termination.

I hereby authorize all of my present and former employers, school authorities and persons listed as personal references to furnish Lowe's, or any agent acting on its behalf, information concerning my personal character, work habits and employment record (such as a statement of the reasons for the termination or separation of my employment), work performance, abilities, and other qualities pertinent to my qualifications for employment. I hereby release all such persons and Lowe's and their respective officers, directors, employees, or agents, in both their individual and representative capacities, from any and all liability for damages of whatever nature arising from furnishing or receiving the requested information.

Lowe's is hereby authorized to make any investigation of my personal history and financial and credit record through any investigative or credit agencies or bureaus of Lowe's choice, at anytime during the course of my employment with Lowe's. I also understand that, upon written request, I will be informed if a consumer credit report was requested, and if such a report was requested, I will be told the name and address of the agency furnishing the report.

I understand that I may be required to undergo screenings for substance abuse (drugs) as a condition of my employment.

I also understand that all employment with Lowe's Companies, Inc. and its Subsidiaries, Lowe's Home Centers, Inc. and the Contractor Yard, Inc. or any affiliate thereof is 'at will' and may be terminated by Lowe's or by me at any time and for any reason or no reason at all with or without notice.

Lowe's is an equal opportunity employer. Our policy is to consider all applicants for employment based on their qualifications and our current job vacancies. Applicants are considered without regard to race, color, religion, sex, national origin, age, disability, or marital status or any other category that may be protected under applicable law.

MY SIGNATURE IS EVIDENCE THAT I HAVE READ AND AGREE WITH THE ABOVE STATEMENTS.

L 0010



# HIRING PROCESS

Thank you for interest in Lowe's. Our commitment to excellence begins with hiring the most qualified candidate. We want to provide you with information about Lowe's to help you make an informed decision to apply. Before you begin the formal application process, please read this statement of basic standards and requirements. If you feel that you can comply, we welcome your application. Please acknowledge your understanding by signing your name on the line provided below.

**SUBSTANCE ABUSE** — Lowe's provides a substance-free workplace. All candidates will undergo urinalysis and/or hair testing to determine any level of controlled substance. A confirmed positive drug test will result in disqualification or termination.

**BACKGROUND CHECKS** — Lowe's will conduct an extensive background check which may include verification with the Social Security Administration, Department of Motor Vehicles, criminal Courts, state and county repositories of criminal records, credit bureaus, and employer mutual associations. Falsification of information or failure to provide information can result in disqualification, or termination if discovered after hire.

**EMPLOYMENT INTERVIEWS** — Several interviews may be conducted with you in order to determine if you are the best candidate and to provide more detailed information regarding your work history and qualifications.

**SURVEYS** — Various surveys may be administered to determine your attitude and aptitude in job-related areas.

**PHYSICAL EXAMINATION** — Some positions in the company require a physical examination.

**CUSTOMER SATISFACTION** — All of Lowe's Employee Owners commit to provide our customers knowledgeable and friendly assistance whenever needed, regardless of where each job is performed.

I have read and understand the employee selection process utilized by Lowe's.

*Demetrius Dean*  
Applicant's SIGNATURE

1-2-01  
DATE

NOTE: We intend to fully verify all information on your application. Be complete and accurate in your responses. Falsification or omission of information will lead to termination.

NOTE: An objection does not necessarily disqualify an applicant from consideration.

Would you be willing to:

Work overtime when needed?

☒ YES ☐ NO

Work holidays (not including Thanksgiving and Christmas)?

☒ YES ☐ NO

Work a schedule that changes from week to week?

☒ YES ☐ NO

Interrupt your break to help a customer?

☒ YES ☐ NO

Be at work on time every time?

☒ YES ☐ NO

Report to work and remain free from being under the influence of drugs or alcohol?

☒ YES ☐ NO

Wear safety equipment required for your job?

☒ YES ☐ NO

Work in an environment that may sometimes be hot or cold, dusty and noisy?

☒ YES ☐ NO

Please explain objections you may have to any of the conditions noted above, such as the desire for a part-time schedule.

## RATE YOURSELF

Circle the number that best describes you. One is average, five is excellent.

FRIENDLINESS: 1 2 3 4 5

HELPLEFULNESS: 1 2 3 4 5

WORK ETHIC: 1 2 3 4 5

HONESTY: 1 2 3 4 5

TEAM PLAYER: 1 2 3 4 5



# Lowe's Strategic Training & Achievement Review/ Career Development Review (STAR/CDR)

Last Name <i>Dean</i>	First <i>David</i>	Middle	STAR Effective Date
Job Title <i>RTM Clerk</i>		Reason for Review <input type="checkbox"/> Merit <input type="checkbox"/> Promotion <input checked="" type="checkbox"/> Other <i>90 days</i>	

STAR Standards (see back)	Exceeds Standard	Meets Standard	Does Not Meet Standard
01 Customer Service	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
02 Merchandising	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
03 Computer Operation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
04 Product Knowledge	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
05 Loss Prevention & Safety	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
06 Attendance/Punctuality	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
07 Organization	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
08 Report/Record Keeping	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
09 Initiative, Teamwork & Reliability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10 Job Knowledge	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11 Training	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12 Job Performance	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Supervisor Comments\* (please include explanation for failure to meet standard(s) if applicable):  
*David has recently found himself really grasping the different aspects of the RTM position. The area is coming together and needs some improvement on his attendance and on the organization of his paper work, like OFR and Cleared RTM reports.*

Training Completed Since Last Review: Description and Date \_\_\_\_\_ Last Review Date \_\_\_\_\_

Training Goals For Next Review: Description & Date for Completion\*  
*I would like for Dave to complete the SOS test on WKLN on all the receiving test as well.*

❖ This section should be completed by employee only when employee meets or exceeds all standards. ❖

### Career Development Review

Please check the box that best matches how you feel about your work at Lowe's

Do you know how to apply for other jobs at Lowe's? ☐ Yes ☐ No

☐ I am very satisfied with the job I have at Lowe's and have little interest in a job change.  
☐ I am satisfied with the job I have, but would like another job at my current level even more.  
☐ I am very interested in exploring the training required for a promotion.  
☐ I am not satisfied with my job and want to talk about other opportunities.

What are your career goals? Have they changed since you started at Lowe's? How? Why?

What training do you need to be more successful in your current job? A job you want in the future?

*SOS - training so I can be more understanding to this procedure.*

Employee Comments:  
*Being treated fairly is alright, being appreciated is good. Being compensated for a job such as RTM - is hopefully approaching. I like what I do, with time I can do it better.*

Store Manager Signature <i>[Signature]</i>	Store Manager Name (Printed) <i>Robert Estes</i>
Supervisor Signature <i>[Signature]</i>	Supervisor Name (Printed) <i>Robert Estes</i>
Employee Signature <i>David H. Dean</i>	Month/Year of Next Planned Review <i>3/10/05</i>

EXHIBIT NO. *9*  
*3/10/05*

# Lowe's Strategic Training & Achievement Review/Career Development Review (STAR/CDR)

Last Name <u>Dean David</u> First <u>David</u> Middle <u></u>		STAR Effective Date <u>1-6-02</u>	
Job Title <u>RTM Clerk</u>		Reason for Review <input type="checkbox"/> Merit <input type="checkbox"/> Promotion <input checked="" type="checkbox"/> Other <u>Annu</u>	

STAR Standards (see back)	Exceeds Standard	Meets Standard	Does Not Meet Standard
01 Customer Service	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
02 Merchandising	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
03 Computer Operation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
04 Product Knowledge	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
05 Loss Prevention & Safety	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
06 Attendance/Punctuality	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
07 Organization	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
08 Report/Record Keeping	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
09 Initiative, Teamwork & Reliability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10 Job Knowledge	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11 Training	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12 Job Performance	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Supervisor Comments\* (please include explanation for failure to meet standard(s) if applicable):  
David has the knowledge and can certainly perform this job. I think that his constant time away from work is directly affecting the productivity - He also needs to be more organized especially w/ all the reports and OFR log.

Training Completed Since Last Review: Description and Date\* N/A Last Review Date

Training Goals For Next Review: Description & Date for Completion\*  
Dave needs to cross-train w/ price checker  
1-6-03

❖ This section should be completed by employee only when employee meets or exceeds all standards. ❖

### Career Development Review

Do you know how to apply for other jobs at Lowe's? ☐ Yes ☐ No

Please check the box that best matches how you feel about your work at Lowe's

☐ I am very satisfied with the job I have at Lowe's and have little interest in a job change.

☐ I am satisfied with the job I have, but would like another job at my current level even more.

☐ I am very interested in exploring the training required for a promotion.

☐ I am not satisfied with my job and want to talk about other opportunities.

What are your career goals? Have they changed since you started at Lowe's? How? Why?

What training do you need to be more successful in your current job? A job you want in the future?

1 yr - has help me familiarize with my duties and more time will be an ally in RTM functions.

Employee Comments:

Major concerns are appliances tools, and other items needs to be marked with what's wrong with it plus receipts of purchases, that helps the return process turn over.

Store Manager Signature <u></u>	Date <u></u>	Store Manager Name (Printed) <u></u>	<div style="border: 1px solid black; padding: 5px; margin: 0;"> <u>Dean</u>  EXHIBIT NO. <u>10</u>  <u>3/10/05</u> <u>c</u> </div>
Supervisor Signature <u></u>	Date <u>1-24-02</u>	Supervisor Name (Printed) <u>Robert Egle</u>	
Employee Signature <u>David Dean</u>	Date <u>1/30/02</u>	Month/Year of Next Planned Review <u></u>	



# LOWE'S

## EMPLOYEE PERFORMANCE REPORT

<i>Dean</i> EXHIBIT NO. <u>11</u> 3/10/05
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Print Employee's Name <i>Dave Dean</i>	Location # <i>1094</i>	Department <i>RTM</i>	Date <i>1-20-02</i>
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Check Type of Notice: <input checked="" type="checkbox"/> INITIAL <input type="checkbox"/> WRITTEN <input type="checkbox"/> FINAL NOTICE <input type="checkbox"/> TERMINATION	Check Reason for Employee Performance Report: <input type="checkbox"/> COMMENDATION FOR GOOD JOB PERFORMANCE <input type="checkbox"/> VIOLATION OF COMPANY POLICIES <input checked="" type="checkbox"/> POOR JOB PERFORMANCE <input type="checkbox"/> OTHER _____
---	---

Describe the conduct/performance (who, what, when, why, where and how).

*Today I had to sit down and have a discussion with Dave on the condition of the RTM Cage. On several occasions I've had to personally work overnight to help clean up his area. I told him I don't mind helping out, but he needs to maintain it. Dave has agreed and says that his efforts will increase to ensure that the area is well kept.*

What is expected in the future? Include follow-up dates.

*Follow up is ongoing -*

List previous performance reports within the last 12 months:

Date _____	<input type="checkbox"/> INITIAL	<input type="checkbox"/> WRITTEN	<input type="checkbox"/> FINAL NOTICE	Reason _____
Date _____	<input type="checkbox"/> INITIAL	<input type="checkbox"/> WRITTEN	<input type="checkbox"/> FINAL NOTICE	Reason _____
Date _____	<input type="checkbox"/> INITIAL	<input type="checkbox"/> WRITTEN	<input type="checkbox"/> FINAL NOTICE	Reason _____

Employee Comments:

Employee Signature does not mean the employee agrees with the content of this report, it only verifies that discussion about this report occurred.	Employee's Signature	Date
Print Supervisor's Name <i>Steve A Vaughn Jr.</i>	Supervisor's Signature <i>[Signature]</i>	Date <i>1/20/02</i>
Print Manager's Name <i>Robert Estes</i>	Manager's Signature <i>[Signature]</i>	Date <i>1-20-02</i>

This report does not modify the Contract of Employment, which is terminable at the will of either party, with or without cause, at any time, and for any reason.

Retain a copy in the employee's personnel file. Provide the employee a copy of the initial, written or final notice report.



# LOWE'S

## EMPLOYEE PERFORMANCE REPORT

Dear  
EXHIBIT NO. 12  
3/14/05 C

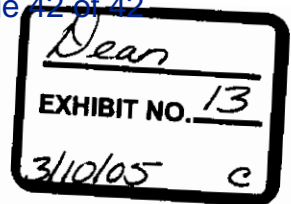
Print Employee's Name <u>Dave Dean</u>		Location # <u>1094</u>	Department <u>RTM</u>	Date <u>4-01-02</u>
Check Type of Notice: <input type="checkbox"/> INITIAL <input checked="" type="checkbox"/> WRITTEN <input type="checkbox"/> FINAL NOTICE <input type="checkbox"/> TERMINATION		Check Reason for Employee Performance Report: <input type="checkbox"/> COMMENDATION FOR GOOD JOB PERFORMANCE <input type="checkbox"/> VIOLATION OF COMPANY POLICIES <input checked="" type="checkbox"/> POOR JOB PERFORMANCE <input type="checkbox"/> OTHER _____		
Describe the conduct/performance (who, what, when, why, where and how). <u>Just recently we had inventory, and Andy Ramo's was conducting some reviews for operations. When Andy went to view the RTM cleared report to see it was working properly, he found that it was not worked at all. Dave had been instructed and shown how to print this on several occasions, both by myself and Steve Vaughn. To this day the report is still not printed or worked.</u>				
What is expected in the future? Include follow-up dates. <u>Dave is expected to print the reports pertinent to his functions. Follow-up is ongoing and any other violation of this or any other kind will be dealt with by disciplinary action up to and including termination.</u>				
List previous performance reports within the last 12 months: Date <u>1-20-02</u> <input checked="" type="checkbox"/> INITIAL <input type="checkbox"/> WRITTEN <input type="checkbox"/> FINAL NOTICE Reason _____ Date _____ <input type="checkbox"/> INITIAL <input type="checkbox"/> WRITTEN <input type="checkbox"/> FINAL NOTICE Reason _____ Date _____ <input type="checkbox"/> INITIAL <input type="checkbox"/> WRITTEN <input type="checkbox"/> FINAL NOTICE Reason _____				
Employee Comments:				
Employee Signature does not mean the employee agrees with the content of this report, it only verifies that discussion about this report occurred.		Employee's Signature <u>Dave Dean</u>		Date <u>4/1/02</u>
Print Supervisor's Name <u>Steve A Vaughn Jr</u>		Supervisor's Signature <u>[Signature]</u>		Date <u>4/1/02</u>
Print Manager's Name <u>Robert Estes</u>		Manager's Signature <u>[Signature]</u>		Date <u>4/1/02</u>

This report does not modify the Contract of Employment, which is terminable at the will of either party, with or without cause, at any time, and for any reason.

Retain a copy in the employee's personnel file. Provide the employee a copy of the initial, written or final notice report.

# LOWE'S

## EMPLOYEE PERFORMANCE REPORT



Print Employee's Name <u>Dave Dean</u>	Location # <u>1094</u>	Department <u>RTM</u>	Date <u>4-01-02</u>
Check Type of Notice: <input type="checkbox"/> INITIAL <input type="checkbox"/> WRITTEN <input checked="" type="checkbox"/> FINAL NOTICE <input type="checkbox"/> TERMINATION	Check Reason for Employee Performance Report: <input type="checkbox"/> COMMENDATION FOR GOOD JOB PERFORMANCE <input type="checkbox"/> VIOLATION OF COMPANY POLICIES <input checked="" type="checkbox"/> POOR JOB PERFORMANCE <input type="checkbox"/> OTHER _____		

Describe the conduct/performance (who, what, when, why, where and how).  
Today April 1, 2002 I came in to a what seems to be become  
a familiar sight. The RTM area was atrocious the items that  
we received credit for were still on the dock, not shipped out.  
The appliances that have not received credit have no disposition  
on them as discussed in prior meetings with Dave. The inside  
of the cage is also extremely unorganized as well as the dock  
and work area. In my professional opinion I don't believe the RTM  
What is expected in the future? Include follow-up dates. position is the best fit for Dave  
Dave will be moved out of RTM's and placed in a different  
position that will allow him to succeed in this company instead.  
decline. Follow-up is ongoing and violation of this or any other rule will be  
List previous performance reports within the last 12 months: with by disciplinary action up to and  
termination.

Date \_\_\_\_\_ ☐ INITIAL ☐ WRITTEN ☐ FINAL NOTICE Reason \_\_\_\_\_  
 Date 4-01-02 ☐ INITIAL ☒ WRITTEN ☐ FINAL NOTICE Reason Poor Job Performance.  
 Date \_\_\_\_\_ ☐ INITIAL ☐ WRITTEN ☐ FINAL NOTICE Reason \_\_\_\_\_

Employee Comments:

Employee Signature does not mean the employee agrees with the content of this report, it only verifies that discussion about this report occurred.	Employee's Signature <u>Dave Dean</u>	Date <u>4/1/02</u>
Print Supervisor's Name <u>Steve A Vaughn Jr</u>	Supervisor's Signature <u>[Signature]</u>	Date <u>4/1/02</u>
Print Manager's Name <u>Robert E. Jones</u>	Manager's Signature <u>[Signature]</u>	Date <u>4-1-02</u>

This report does not modify the Contract of Employment, which is terminable at the will of either party, with or without cause, at any time, and for any reason.

Retain a copy in the employee's personnel file. Provide the employee a copy of the initial, written or final notice report.